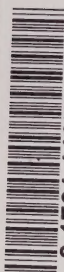




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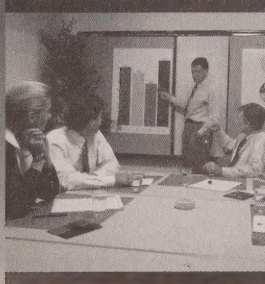
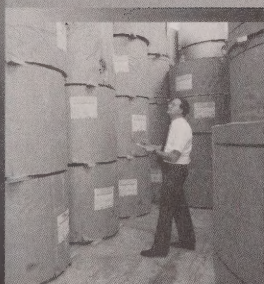


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CANADA AND THE FUTURE OF THE WORLD TRADE ORGANIZATION:

Advancing a Millennium Agenda
in the Public Interest

Report of the Standing
Committee on Foreign Affairs
and International Trade



Bill Graham, M.P.
Chair

June, 1999

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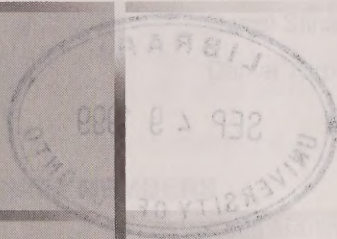
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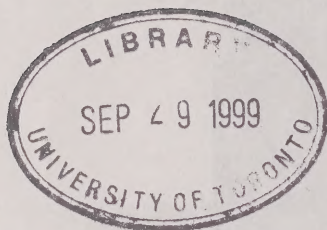
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CANADA AND THE FUTURE OF THE
WORLD TRADE ORGANIZATION

Advancing the Canadian Agenda
in the World Economy

Report of the Standing
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THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE

has the honour to present its

NINTH REPORT

In accordance with its mandate under Standing Order 108(2), your Committee has examined Canada's trade objectives and the forthcoming agenda of the World Trade Organization (WTO).

EXECUTIVE SUMMARY

LIST OF RECOMMENDATIONS

INTRODUCTION: PREPARING CANADIANS FOR THE GLOBAL

TRADE CHALLENGE

"What Canadians are Saying"

Linking Trade and Canadian Foreign Policy Goals with Changing International Economic Circumstances

Responding to the Globalization Debate

Preparing for Success and Beyond: The New Roles of International Trade Organizations

What Canadians Told the House of Commons and European Union Ministers

Towards Including a Letter-Open Policy and Parliamentary Trade Oversight Process

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CHAPTER 1: TOWARDS A WTO FOR THE NEW MILLENNIUM

"What Canadians are Saying"

Improving the WTO "Constitutional" Monitor and Review

Self-Review and Accountability



THE STANDING COMMITTEE ON FOREIGN AFFAIRS
AND INTERNATIONAL TRADE
NINTH REPORT

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CHAIR'S FOREWORD

Earlier in this Session, Minister Marchi asked the Committee to report to him prior to the House rising in June, on what positions Canada should advance in the WTO negotiations to be launched in November of this year. We willingly undertook this task, knowing, however, that it would represent a formidable challenge, given the extensive responsibilities that the Committee has in so many other areas. Meeting that challenge, however, has been a very rewarding one, both because it has allowed us to learn more about this incredibly rich and diverse country and also because we have been able to appreciate the depth of knowledge and understanding that our fellow citizens have concerning the functioning of the world trading system.

As recently as ten years ago it would have been fair to say that the GATT, as the WTO was then called, was little known except to a select group of experts and its significance to the economic well being of Canada little appreciated by Canadians as a whole. Today there is a very different landscape. One in which experts in trade rub shoulders with representatives of business, labour, agriculture, academics, NGOs, politicians from all levels of government and citizens, all interested in ensuring that we are participating in a world trading system that advances our interests and, at the same time, reflects our values.

To some extent it may be said, that the greater public awareness of the issues at stake in these negotiations is a result of the intense public debate that took place around the failed MAI negotiations and concerns about the effects of what is generally referred to as "globalization" on our society. However, I think that it is also true that Canadians generally are more and more aware of the importance that international trade plays in determining our prosperity in what is one of the world's most open markets. As a result the Committee was able to benefit from the informed opinion of hundreds of Canadians as we travelled across the country from Halifax to Vancouver. The Report reflects their advice to the government in such widely different fields as agriculture, services trade, the emerging trade in information technologies such as the Internet and electronic commerce, competition policy and many other areas that are of concern to Canadians. Indeed it is fair to say, and this Report reflects the reality, that Canadians had opinions on every area that will form the basis of the future negotiations. These are often very complex issues and ones where opinions can diverge greatly. The Report seeks to ensure that all points of view are accurately reflected in the text, even when the recommendations seek to point the Government in certain specific directions.

Public opinion was particularly intense in respect of four areas of concern to Canadians. The preservation of our Canadian cultural identity, including cultural diversity throughout the world, human rights, labour standards and the protection of the environment must, in their view, form an integral part of the future negotiations. Political support for the new trade talks depends, to a large measure, on these issues being added to the WTO agenda.

A Report of this complexity and scope could not have been prepared without the collaboration of a great many dedicated and talented people who have been willing to work long

hours under intense pressure to bring it to completion. Our research team, led by the indefatigable Gerald Schmitz of the Parliamentary Research Branch of the Library of Parliament and ably assisted by Daniel Dupras, Christopher Maule, Roy Hines and Jean-Denis Fréchette, each one of whom contributed his great personal expertise and writing skills to the task, is to be thanked and congratulated as being responsible for bringing together and digesting the results of so much testimony and providing the Committee with clear guidelines for our recommendations. They were greatly aided in their work by graduate student assistant Ms. Helgi Maki from the Norman Paterson School of International Affairs at Carleton University.

Our Committee Clerk, Ms. Janice Hilchie, together with her Committee staff members, Ms. Caroline Martin and Ms. Diane Lefebvre, are to be thanked for their usual efficiency in ensuring that our work and travel were conducted in the most professional and productive manner, this always calmly and with good cheer in what were often difficult circumstances. Also to be warmly thanked are our many translators, editors, interpreters, console operators and others, as well as the staff of Publications Services, without whom our work could not have been accomplished.

I would also like to thank the Members of the Committee from all parties who worked assiduously on this report under very demanding time constraints while also attending to so much other important work of the Committee, particularly the very distressing concerns over the situation in Kosovo.

Finally I would like to thank, on behalf of all the members of the Committee, the members of the Canadian public who shared their insights with us. I hope that this Report responds to their concerns and contributes to our national goal of ensuring that Canadian values and priorities are reflected in the evolving world trading regime that is of such importance to us all.

PREFACE

In September 1998, the Minister for International Trade, Hon. Sergio Marchi, invited the Committee to undertake public consultations on the full range of issues relating to the agendas of both the World Trade Organization (WTO) and the proposed Free Trade Agreement of the Americas (FTAA). The Committee agreed that it would be important to hear from a broad spectrum of Canadian society during the key preparatory phases of trade policy development leading up to major WTO and FTAA ministerial conferences taking place in late 1999. Given the ongoing work on its Report, Canada and the Nuclear Challenge, tabled in December 1998, the Committee could not turn its attention to these matters until Parliament resumed in February 1999. At that time, it also assigned the regional FTAA study to its Sub-Committee on International Trade, Trade Disputes and Investment, which will report in the Fall.

Mindful of the momentum building for the possible launch of a wide-ranging "Millennium Round" of WTO negotiations at the Seattle Third Ministerial Conference in December 1999 – and the many pressing questions surrounding the need for, the direction, scope, and orientation of such negotiations – the Committee as a whole has pursued an intensive hearings process since February in order to be able to release this Report before the summer recess. We believe it is important to allow sufficient time for public dissemination and comment, and for our findings and recommendations to be considered seriously in the formulation of positions taken by the Canadian government to the Seattle meeting. The Report necessarily addresses a large number of salient trade policy issues as well as the many public concerns, both on issues of process and substance, which were sometimes passionately expressed. The Committee's study also reflects a learning process and a work in progress. In that regard, among other proposals for strengthening societal engagement, we advocate in particular a continuing role for parliamentary oversight at all

stages of future trade policy development, implementation, and review.

Coincidentally, in light of the Committee's discharge of its broader foreign policy mandate, the grave conflict in the Balkans has been the starkest possible reminder that we are very far from living in some imagined benign "borderless" world in which the actions of states – for good or ill – are eclipsed by the supposed inexorable globalizing forces of unconstrained markets and advanced technologies. As globalism and tribalism contend and collide in sometimes unforeseen ways, the contradictions of an often disorderly international system continue to present a medium-sized nation such as Canada with many challenges. The biggest of these is to take full advantage of opportunities for making a constructive difference in accord with our own national interests and values, working towards a better world that puts the rights of human individuals to opportunity and basic security at the top of the agenda.

In the making of foreign economic as well as security policy, citizens and their governments do have real *political* choices to consider; often difficult ones, under pressure, and with no assured outcome. Our inquiry into the next steps for Canada in the international trading system has been an open one, without prejudging the controversial issues of power, interdependence, and fairness in the governance of an emerging global economy with which the future WTO will have to wrestle. As part of that democratic deliberation, we have listened to all sides of this debate, recognizing that much more is at stake than just the promotion of commercial trade and investment interests, important as that may be to Canada's prosperity among nations. Fundamentally, the underlying question we have had to address is: what kind of global trading regime will best serve the long-term public interest of our fellow Canadians? The corollary

question is: what priorities should the Canadian government be pursuing, through processes within Canada and in concert with other countries, to contribute to a beneficial result, specifically in the context of the systemic as well as sectoral issues which will be up for discussion in Seattle and beyond?

Observing that international trade decisions have become a “local issue,” with impacts increasingly reaching into domestic policy domains, Minister Marchi affirmed in his opening statement to the Committee that “policy makers need to do three things, both internationally and at home:

- First, we need to make the whole process more transparent. Canadians want their governments, and international institutions, to be more open and accountable. As we construct the framework for the global economy, we must ensure that Canadians’ voices are heard.
- Second, we need to be more responsive. When Canadians express their concerns – whether they be over labour standards, human rights, or a perceived loss of sovereignty – we cannot dismiss them as overreactions of the uninformed. We need to address these concerns head on and present Canadians with the facts.
- Third, and related to the other points, we need to be more inclusive. We cannot continue to carry on discussions about trade and globalization over the heads of the people. The changes we introduce are felt by individuals. And, if history teaches us anything, it is the importance of building a strong consensus on issues that affect our people so directly.”

The Committee agrees. But having raised these expectations, governmental trade policy making processes must be held to that higher standard they have set for themselves, and must address the level of distrust which we frequently encountered during our hearings. The Department of Foreign Affairs and International Trade has added a number of consultation papers to its Website. The Committee has also put a series of discussion notes with questions for public consideration on

its Website. But clearly this is only the beginning of a process of involving citizens and government bodies at all levels – a process that must be ongoing and interactive so that it is capable of facilitating genuine dialogue and forging a larger national consensus. It is also a reason that we have included a “Citizens’ Guide to the WTO” within our Report, and as part of a separate publication containing the Report’s summary highlights. We hope this condensed user-friendly version will have the widest possible circulation.

The Committee’s own process in undertaking this study has been instructive. After hearing initially from the Minister and senior officials in early February, we held a number of roundtables on major policy themes in Ottawa during March and April. Travelling beyond the capital, in late March the Committee divided into two groups in order to hear from witnesses in six centres in Quebec and the Atlantic provinces. Completing the cross-country hearings during the last week of April, two Committee panels visited eight centres in the western provinces and Ontario. Within the limits of time and resources, this was by far the largest and most intensive parliamentary consultation ever held on international trade issues. Not only was it unprecedented in scope, it was also the first time that such a process has been carried out months prior to the start of formal negotiations. Altogether, in the course of more than 30 public sessions, over 400 witnesses from across Canada made presentations, many accompanied by substantial written briefs (see Box 2). Members of the Committee have been impressed by the seriousness and quality of these submissions. While drawing on them throughout the report – including a “What Canadians are Saying” section in each chapter – we commend an examination of the full recorded transcripts, which are available on the Committee’s Internet site, to the Government and members of the public.

In addition, recognizing that Canada is only one of 134 WTO member countries, and that much will depend on the international context leading up to the Seattle Ministerial Conference, the Committee has sought to include that outward

perspective in its study. Although travel abroad proved unfeasible at this time, the Committee did hear from several prominent experts based outside of Canada, as well as from our ambassadors to the European Union (EU) and to the WTO itself. We are fully conscious that Canada must be well prepared to engage other governments and civil-society actors in shaping the global trade agenda into the early part of the new millennium. This includes both taking stock of the contested record of trade and investment liberalization to date, and strategically looking ahead to alliance-building possibilities. It is not going to be simply a matter of coming up with a Canadian “wish list” that presumes to design, unilaterally or in the abstract, some ideal set of objectives at the global level. In order for Canadian leadership to be effective multilaterally, proposals which are put forward must be workable; not only should they reflect a solid degree of domestic consensus, they should also have a reasonable chance of gaining significant support from among other participants in the WTO system, at least in the longer term.

The organization of the Report is straightforward. In an extensive introductory section which follows the “Citizens’ Guide”, the Committee outlines more fully the policy-making context that needs to be taken into account, and also articulates the major messages which emerged most strongly from the public hearings process. This leads to a key first recommendation on instituting a deeper and more sustained approach to democratic policy deliberation that is as representative and constructive as possible.

The three chapters in Part I of the Report, on Canadian interests in building a better global trade regime, address in turn: major systemic and structural reform issues (notably relating to “constitutional” mandate and powers, principles such as transparency and accessibility, democratic governance and accountability) confronting the WTO as an evolving global institution and Canada’s role within it; strategic approaches to the determination of Canadian objectives entering

into any forthcoming negotiations at the WTO in light of domestic priorities and international dynamics; central issues arising from the implementation of existing and future WTO obligations, the review of trade-related impacts, and the settlement of an increasing number of complex disputes.

The seven chapters in Part II turn to the principal sectors of current and future Canadian commercial interest. Some are already scheduled to be the subject of early negotiations following review by the Seattle meeting – notably agriculture, services, and several other areas forming part of the so-called “built-in agenda” mandated under the 1994 Uruguay Round agreements (which also created the WTO as the successor body to the General Agreement on Tariffs and Trade (GATT)) and subsequently updated at the two previous ministerial conferences (Singapore 1996; Geneva 1998). Other sectors, such as culture, and emerging issues in knowledge-based and technology-driven sectors (e.g., information flows and electronic commerce) raise new and daunting challenges for the trading system. At the same time, as witnesses from export-oriented businesses pointed out to the Committee, there are many ongoing market access, tariff, trade facilitation, and trade-remedy issues which need attention in established goods sectors as well as newer services areas. The Report devotes a significant chapter to these. We also look at sectors such as government procurement where opportunities for Canadian exporters in foreign markets will have to be balanced with domestic concerns about the impacts of liberalized rules on governments down to the local level.

The Committee appropriately heard a great deal on agriculture and agri-food issues in all regions of the country – not only in terms of priorities for achieving market access and fair competition, but also concerns about maintaining farm incomes and viable rural communities, sustainable management and control of key natural resources including water, food safety and security objectives. Building on the work done by the House of Commons Standing Committee on

Agriculture and Agri-Food, the federal and provincial governments, and most importantly the stakeholders themselves, we have tried to highlight areas of common ground so that Canada can move forward from a position of strength in the crucial forthcoming negotiations at the world level.

In some other sensitive areas, which potentially could become the subject of future WTO negotiations if a larger round is launched at Seattle, there is much less public consensus on how to proceed. Some controversial areas like intellectual property rights are already governed by a major WTO agreement; others, such as rules for culture, investment, and competition policy have been addressed by the WTO only to a limited extent or indirectly. Several matters remain extremely contentious as to *whether* they should be negotiated within the WTO at all at this time, or exactly *how* this should be done even if it were agreed that a multilateral framework of WTO-enforced rules would be desirable. The Committee reviews the issues and arguments and suggests general guidelines for the development of a careful Canadian approach to these issues leading to Seattle and beyond.

The several chapters in Part III, on the “social dimension” of the international trade regime, enter territory which is perhaps the most sensitive of all for national governments, and in the case of trade-environment and health-related linkages, already the subject of a great deal of WTO dispute-settlement jurisprudence and critical commentary. Much of the debate over issues of social “protection” has been reactive – galvanized by the alleged harmful spillover effects from competitive trade liberalization and increasing international economic integration into areas of environmental, social and labour-market regulation which have been the primary responsibility of domestic authorities. Increasingly, debate is also now focussed on the proactive advocacy of stronger international, ultimately global, standards – for example, those

in multilateral environmental agreements, the International Labour Organization’s (ILO) conventions on “core” labour rights, and the obligations under United Nations human rights covenants – perhaps linked to enforceable WTO disciplines in some way. This raises thorny issues about the proper scope of global trade rules, on which there is as yet little international agreement and resolving which will demand innovative bridging approaches. While the testimony clearly indicates that many Canadians want to see important values preserved and promoted within the trading system, others warn against overloading the WTO agenda and compromising its core mission. The Committee’s exploration of these issues puts forward some workable options for Canada to pursue at the WTO with the aim of making progress on policy integration and coherence while avoiding such pitfalls.

Part IV of the Report also looks ahead to longer-term challenges of the WTO system having to do with issues of equitable development and global economic governance. It is worth recalling that three-quarters of the WTO’s members are developing countries and this presence will be even greater when China accedes, as seems likely before too long. Clearly a range of trade and development concerns, including capacity-building assistance for smaller and weaker WTO members, will have to be addressed if there is to be a successful outcome beyond Seattle. It will also be important to ensure that the various regional trade processes – notably that of the FTAA currently being chaired by Canada – reinforce overall multilateral goals. Finally, in the wake of the recent Asian and emerging-markets financial turbulence, the issues of international economic governance and reforming the post-Bretton Woods institutional “architecture” are once again high on the global policy agenda. The long-delayed transition from the “interim” GATT to the permanent WTO raises the prospect of new global arrangements being fashioned, beginning with improving coherence

and coordination among the WTO, the international financial institutions, and the United Nations system.

The Committee is under no illusion that such things will happen quickly or easily. Undoubtedly there will be many disagreements and impediments to overcome along the way. Which is why getting the process right will be critical to achieving the results that we want. In the circumstances surrounding the Seattle Conference, there are no simplistic options; nor can we afford to isolate ourselves, to retreat, or to stand still. As Ambassador Weekes indicated to the Committee in his appearance on May 11, 1999, and confirmed soon after at the meeting of Quadilateral trade ministers, momentum appears to be building in favour of a more far-reaching WTO round. While the negotiations that are

mandated will not happen quickly, time is short for getting items on or off the agenda before November. Ministers will begin considering draft recommendations over the summer.

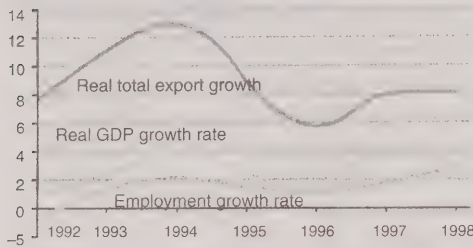
In that context, it is essential that Canada be at the table well prepared to defend and advance its own agenda. Canada must go forward into these talks with a long-term vision as well as specific objectives if we are really serious about making an open, rules-based trade and investment system work in the interests of all Canadians and people generally around the world. For a country that depends as heavily for its prosperity and security on international trade and investment flows as Canada does (see Box 1), nothing less is required. That is the underlying essence of our Report and our recommendations.

Box 1 The Importance of International Trade and Investment to Canada*

Looking ahead to 2000, world trade in merchandise goods and commercial services will exceed \$8 trillion (\$2 trillion more than in 1995). The WTO will soon have more than 160 member countries accounting for 95% of world trade. Just as it did as an original signatory to GATT Tariff reductions, Canada must continue with its leadership role in a multilateral trading system. This becomes important as the WTO grows and expands.

Professor Engene Beaulieu, University of Calgary
Submission, April 29, 1999 Calgary

Figure 1
Canada Trade Contributes to Growth,
Deficit Reduction and Job Creation



Source: DFAIT and Statistics Canada

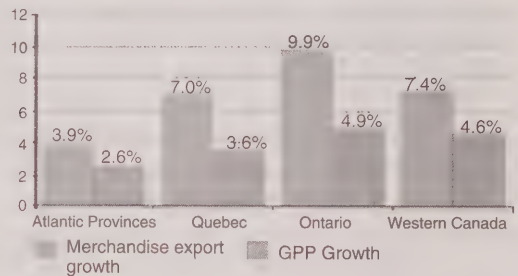
Economic Growth through improved market access

Economic growth, job creation and deficit reduction result from Canada's international trade performance. In real terms, growth of Canadian goods and services exports (8.1%) exceeded GDP growth by 5.1% in 1998. In a recent study by DFAIT, increased market access through WTO/GATT trade liberalization and the Canada-U.S. Free Trade Agreement (FTA) were found to contribute significantly to export growth since 1990. Imports also increased in 1998 (6.4%) reflecting strong investment/consumer demand and expanding Canada's production capacity through the purchase of machinery, equipment and related business services.

Canadian growth means provincial/regional growth

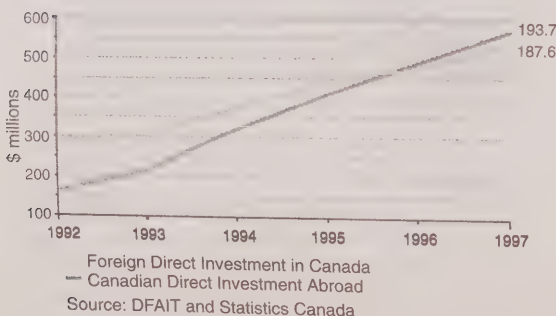
Provincial growth figures for 1998 also reflected the effects of expanded market access. As with the whole of the Canadian economy, merchandise export growth outpaced Gross Provincial /Regional Product (GPP) in all provinces, in turn financing higher imports. Ontario and Quebec were the lead exporting provinces in 1998, with strong links to U.S. markets. Provinces on the west and east coasts maintained relatively robust links with other markets across the ocean. Forest products and agricultural products exported by British Columbia and Saskatchewan were adversely impacted by the Asian economic crisis.

Figure 2
Provincial and Regional GPP Growth



Source: DFAIT and Statistics Canada

Figure 3
Inward and Outward Foreign Investment



Source: DFAIT and Statistics Canada

Investment Paves the Way for Future Trade

The influx of inward foreign investment in 1998 indicates that foreign investors still perceive Canada as a profitable investment location. New technology accompanies inward FDI, heightening Canadian productivity and Canadian employment. Canada's direct investment abroad creates export opportunities for Canadian businesses of all sizes, as well as broader access to new technologies, resources and skills which bolster the Canadian economy's capacity to create jobs. The mainstay of Canada's inward and outward investment flows remain with the United States and the European Union. Canadian direct investment in developing countries is steadily increasing.

* Figures and trade statistics from *Opening Doors to the World: Canada's International Market Access Priorities 1999*. Ottawa: Department of Foreign Affairs and International Trade, 1999.

ACRONYMS

AB	Appellate Body
ABT	Agreement on Basic Telecommunications (WTO Agreement on Basic Telecommunications Services)
ACP	Association of Canadian Publishers
AD	Anti-dumping
AGP	Agreement on Government Procurement
AIT	Agreement on Internal Trade
AMEC	Alliance of Manufacturers and Exporters of Canada
AMS	Aggregate Measure of Support
APEC	Asia-Pacific Economic Co-operation Forum
ASEAN	Association of South East Asian Nations
BIS	Bank for International Settlements
CAB	Canadian Association of Broadcasters
CAP	Common Agricultural Policy (European Union)
CCA	Canadian Conference of the Arts
CCFTA	Canada-Chile Free Trade Agreement
CCIC	Canadian Council for International Co-operation
CDMA	Canadian Drug Manufacturers Association
CIDA	Canadian International Development Agency
CIFTA	Canada-Israel Free Trade Agreement
CIRPA	Canadian Independent Record Production Association
CITT	Canadian International Trade Tribunal
CLC	Canadian Labour Congress

CP	Competition Policy
CPC	Canadian Publishers' Council
CPPA	Canadian Pulp and Papers Association
CRIA	Canadian Recording Industry Association
CRTC	Canadian Radio–television and Telecommunications Commission
CUSFTA	Canada–US Free Trade Agreement
CVD	Countervailing duty
DFAIT	Department of Foreign Affairs and International Trade
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Commission
E–Comm	Electronic Commerce
EDC	Export Development Corporation
EDI	Electronique Data Interchange
EFTA	European Free Trade Association
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FCPMC	Food and Consumers Products Manufacturers of Canada
FDI	Foreign direct investment
FTA	(Canada–US) Free Trade Agreement
FTAA	Free Trade Agreement of the Americas (project)
FTAA	Free Trade Area of the Americas
G7/8	Group of Seven leading industrialized nations (including or not the Russian Federation)

GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GATT 1947	General Agreement on Tariffs and Trade of 1947
GATT 1994	General Agreement on Tariffs and Trade of 1994
GDP	Gross domestic product
GMO	Genetically Modified Organism
GPT	General Preferential Tariff
GSP	Generalized System of Preferences
HST	Harmonized System of Tariffs
ICHRDD	International Centre for Human Rights and Democratic Development
IFIs	International Financial Institutions
IGO	Intergovernmental organization
IISD	International Institute for Sustainable Development
ILO	International Labor Organization
IMF	International Monetary Fund
IP	Intellectual Property
IPR	Intellectual Property Rights
ISO	International Organization for Standardization
IT	Information Technology
ITA	Information Technology Agreement
ITAC	Information Technology Association of Canada
ITC	International Trade Centre
ITO	International Trade Organization (1947 project)
ITU	International Telecommunication Union

LDCs	Least Developed Countries
MAI	Multilateral Agreement on Investment
MEA	Multilateral Environmental Agreement
MFA	Multifibre Arrangement
MFN	Most Favored Nation
MRA	Mutual Recognition Agreement
MTN	Multilateral Trade Negotiations
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
NT	National treatment
NTB	Non-tariff barrier
NTM	Non-tariff measure
NUPGE	National Union of Public and General Employees
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Cooperation in Europe
PMAC	Pharmaceutical Manufacturers Association of Canada
PPM	Process and Production Methods
PSE	Producers Subsidy Equivalent
PSI	Agreement on Preshipment Inspection
PTA	Preferential Trade Agreement
QR	Quantitative Restriction
Quad	Quadrilateral Trade Ministers' Meeting
ROOs	Rules of origin
SAGIT	Sectoral Advisory Group on International Trade

SAQ	Société des alcools du Québec
SCFAIT	House of Commons Standing Committee on Foreign Affairs and International Trade
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SDR	Special Drawing Rights
SMEs	Small and medium-sized enterprises
SPS	Sanitary and Phytosanitary or Agreement on Sanitary and Phytosanitary Measures
STE	State Trading Enterprise
TBT	Technical Barriers to Trade or Agreement on Technical Barriers to Trade
TMB	Textiles Monitoring Board
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRAMS	Trade-Related Antitrust Measures (proposed)
TRAMS Agreement	Agreement on Trade-Related Antitrust Measures (proposed)
TRIMS	Trade-Related Investment Measures
TRIMS Agreement	Agreement on Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development

UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPA	Union des producteurs agricoles du Québec
UR	Uruguay Round
USITC	US International Trade Commission
USTR	United States Trade Representative
WCO	World Customs Organization
WHO	World Health Organization
WIC	WIC Premium Television
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
WTO Agreement	Agreement Establishing the World Trade Organization
WTO Agreements	Agreements Resulting from the Uruguay Round of Multilateral Trade Negotiations

CITIZENS' GUIDE TO THE WORLD TRADE ORGANIZATION (WTO)

What is the WTO?

The WTO is an organization made up of 134 member countries as of May 1999 with about 30 countries applying to join. Its main function is to ensure that trade between nations flows as smoothly, predictably, and freely as possible. It functions like a club which national governments apply to join. If accepted as members, they commit to abide by the rules and settle disputes in an agreed upon way. Like most clubs, membership both provides rewards and requires obligations. In the case of the WTO, the rewards to each member are the economic benefits from liberalized trade; the obligations involve some mutually agreed upon codes of behaviour that are deemed acceptable in return for the benefits.

What is the origin of the WTO?

The WTO came into being in 1995 but it has evolved over the past 50 years as the successor to the General Agreement on Tariffs and Trade (GATT). At the end of the Second World War, it was decided that international institutions were needed to assist in the process of economic recovery. Negotiators at the time were conditioned by the experience of the 1930s worldwide depression that had been associated with extreme measures of trade protectionism.

At a 1947 United Nations Conference on Trade and Employment in Havana, Cuba, a proposal was discussed to create an International Trade Organization (ITO) to complete the construction of a post-war multilateral economic regime begun several years earlier. At the time, the regime consisted of the International Monetary Fund and the World Bank. The ITO was to be the third pillar and be equipped with strong decision-making and dispute settlement powers to oversee the multilateral trading system. No major

trading country ratified the ITO charter and it never came into existence.

As part of the ITO negotiations, Canada and 22 other countries had begun discussing the process of lowering trade barriers, mainly tariffs, among themselves. In Geneva in 1947 these 23 countries adopted a provisional agreement, the GATT, which was then carried forward when the ITO and the Havana Charter failed.

What was/is the GATT?

The GATT from 1947 was two things: (1) an international agreement that sets out the rules for conducting international trade, and (2) an informal structure to administer the agreement. The text of the agreement could be compared to law, the structure and dispute settlement process to a combination of parliament and the courts. The term GATT was applied to both the agreement and the structure. Over time more countries signed on to the agreement. A version of the GATT exists today as part of the WTO.

Is the WTO the same as the GATT?

The short answer is no. The WTO is the GATT plus a lot more, but before we describe the WTO since 1995, it is useful to summarize what happened between 1947 and the start of negotiations in 1986 leading to the WTO. There have been eight rounds of trade negotiations since 1947. The first five rounds were of relatively short duration and dealt mainly with tariff reductions. The sixth, the Kennedy Round (1963–67), achieved deeper and wider tariff cuts, especially in industrial tariffs, and brought developing country concerns to the fore. The seventh, the Tokyo Round, which lasted six years (1973–79), cut tariffs substantially but also introduced a series of codes on non-tariff barriers (NTBs). These codes were only binding on the

countries that signed them and were criticized by some as being “GATT à-la carte.”

The WTO was the result of the eighth round of negotiations, known as the Uruguay Round (1986–93). It was named for the country which held the conference (at Punta del Este) leading to the decision to proceed. By the 1980s, a number of problems with the world trading system needed to be addressed: certain areas such as agriculture were exempt from GATT rules or were managed under separate agreements such as textiles; trade in services and intellectual property were largely outside the agreement; NTBs and new forms of protectionism were proliferating; and membership had grown to over 90 countries requiring the organization to be reformed.

The Uruguay Round was a complex set of negotiations undertaken to address the prevailing inadequacies of the GATT. The negotiations almost foundered on several occasions. An ambitious draft text was prepared by the GATT Secretariat in December 1991, but only after a breakthrough on agricultural issues between the United States and the European Community did a final agreement emerge in December 1993. In April 1994, in Marrakesh, the *Final Act* incorporating the agreements was signed by representatives of 111 GATT member countries. The *Final Act* was about one page long; the main text including the agreements and annexes about 430 pages long; and there were about 25,000 pages containing the schedules of commitments made by each member country. The *Final Act* took effect in January 1995 when the WTO was launched.

This is a detour to answering the question “Is the WTO the same as the GATT?,” the answer to which can now be phrased as follows. The WTO is the GATT of 1947 as it evolved from subsequent negotiations up to the Uruguay Round where it is termed GATT 1994, plus a new

agreement on services, the General Agreement on Trade in Services (GATS), plus an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), all brought together in a single organization with a single set of rules and a single system for resolving disputes. The WTO club now has more members (134 at the time of writing), has rules covering more activities, and has a more effective means to resolve disputes between the members.

The main differences between the GATT and the WTO are described by the WTO as follows:

- The GATT was provisional. The General Agreement was never ratified by its contracting parties, and it contained no provisions for the creation of an organization.
- The WTO and its agreements are permanent. As an international organization, the WTO has a sound legal basis because all members have ratified the WTO Agreements, and the agreements themselves describe how the WTO is to function.
- The WTO has “members.” GATT had “contracting parties,” underscoring the fact that officially the GATT was a legal text.
- The GATT dealt with trade in goods. The WTO deals with trade in services and intellectual property as well.
- The WTO dispute settlement system is faster and more automatic than the old GATT system. Its rulings cannot be blocked.
- The WTO has introduced a trade policy review mechanism that increases the transparency of members’ trade policies and practices.

What are the components of the WTO?

This question can be answered in three ways: first using an organizational chart, second by summarizing the agreements, and third by outlining the underlying principles of the agreements.

The WTO has more than 130 members accounting for over 90%¹ of world trade. Notably absent from this group are China and Russia, both of whom have applied for membership. Decisions are made by the entire membership, typically by consensus. A majority vote is possible but has never been used in the WTO and was extremely rare under its predecessor, the GATT.

The headquarters of the WTO is located in Geneva. An organizational chart (see Figure 1) sets out its structure. The WTO's top level decision-making body is the Ministerial Conference which meets at least once every two years. Below this is the General Council (normally consisting of ambassadors and heads of delegations at Geneva, but sometimes officials sent from members' capitals) which meets several times a year at the Geneva headquarters. Members of the General Council also meet as the Trade Policy Review Body and the Dispute Settlement Body. The Dispute Settlement Body has two components, one that deals with the panels set up to handle disputes and the other to administer the appeals made to panel decisions.

Reporting to the General Council are The Council for Trade in Goods, The Council for Trade in Services, and The Council for Trade-Related Aspects of Intellectual Property Rights. Below these are numerous specialized committees, working groups and working parties.

A Secretariat of about 500 persons headed by a Director General provides technical support for the various councils, committees and conferences as well as technical assistance to developing countries. It also analyzes world trade and explains the workings of the WTO to the public and the media. The Secretariat provides some forms of legal assistance in the dispute settlement process and advises governments applying to

become members of the WTO. All this is done on an annual budget of about \$120 million, which is now thought to be inadequate to handle its expanded responsibilities.

In order to interact with this process, which is observed by analysts to be increasingly legalistic especially in terms of handling disputes, member countries need to have representatives in Geneva as well as persons at home in their trade or foreign ministry that can deal with the issues. This is an increasing burden on smaller and especially developing countries. Effectively it means that some member countries may be disadvantaged relative to others.

What are the agreements that the WTO administers?

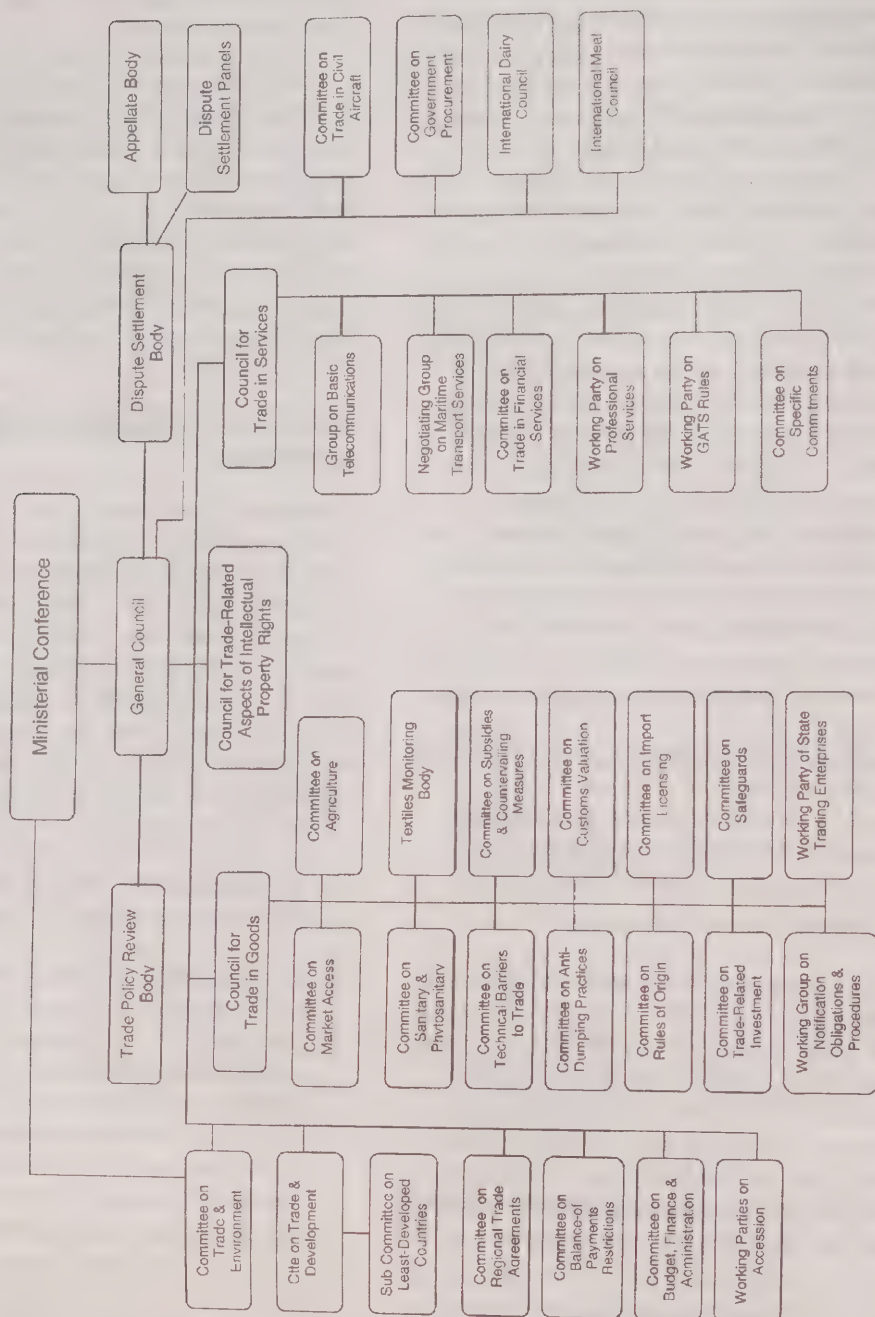
Agreements covering three areas — goods, services, and intellectual property — are the heart of the WTO. The complete set consists of about 60 separate agreements, decisions and declarations, and a listing of the commitments — known as schedules — made by each member country. The schedules list the agreed upon custom duty rates and the commitments made by countries concerning the access allowed to their service industries. In all, this constitutes over 25,000 pages of material.

The agreements mirror parts of the WTO organization. The principal ones concern:

1. **Trade in goods** – This was covered by the old GATT, or GATT 1947, now known as GATT 1994. GATT 1994 includes the original text as amended and updated by GATT Council decisions and rulings from 1947 to 1994 plus the decisions, understandings and agreements reached during the Uruguay Round dealing with specific sectors such as agriculture and textiles, and with specific issues such as state

¹ At the time of writing, the WTO has 134 members. On May 21, 1999 the WTO approved Estonia's entry into the WTO. Estonia will become the WTO's 135th member 30 days after it notifies the WTO Secretariat that it has completed ratification proceedings.

Figure 1. WTO Structure



trading, product standards, subsidies and actions taken against dumping.

2. **Trade in services** – this is covered by a new agreement, the General Agreement on Trade in Services (GATS), that was negotiated during the Uruguay Round. It covers trade in activities such as financial services, professional services, tourism, telecommunications, and audiovisual services (radio, television, film and sound recordings). Most countries have made only limited commitments to open their service industries to foreign competition, but the existence of the GATS means that future negotiations will likely lead to greater liberalization. This is what happened with the GATT from 1947 on, and some analysts comment that the GATS for services in the 1990s is where the GATT for goods was in 1947. The existence of separate agreements for trade in goods and trade in services assumes that the two are different and separable. This has been questioned in two disputes at the WTO, one involving trade in bananas and the other trade in magazines where goods and services are combined.
3. **Intellectual property** – This too is covered by the new Agreement on Trade-Related Intellectual Property (TRIPS) relating to rules for trade and investment in ideas and creativity. The rules state how copyrights, trademarks, geographical names used to identify products, industrial designs, integrated circuit layouts, and trade secrets should be protected when trade is involved. These rules build on a number of intellectual property agreements negotiated under the auspices of the World Intellectual Property Organization (WIPO).
4. **Dispute settlement** – This is handled under the Dispute Settlement Understanding (DSU). A consensual procedure without strong enforcement mechanisms existed under the old GATT. The DSU involves a more legalistic approach to settle disputes with tight deadlines, automaticity in the establishment of panels and the acceptance of decisions, and a process of

appeal. The system encourages countries to settle their differences through consultation prior to initiating a formal dispute. The DSU is considered by some to be the most important achievement of the Uruguay Round. By March 1999, 167 disputes had been brought to the WTO compared to about 300 during the 47 years of the GATT.

5. **Policy review** – A mechanism introduced to assess the extent to which countries adhere to the rules, disciplines, and commitments made under each of the agreements. The review mechanism was first instituted in 1989 and confirmed in the final agreement. One objective is to increase the transparency of the policies adopted by each member. A Trade Policy Review Body (TPRB) carries out the reviews. The top four trading countries, also called the Quadilateral Members, are reviewed every two years (the European Union, the United States, Japan and Canada), the next sixteen every four years, and the remainder every six years with the possibility of longer intervals for the least developed countries.

What are the principles of the WTO trading system?

First, the trading system should operate without discrimination. This means that a member country should not discriminate between its trading partners. They are all to be treated equally on a most-favoured-nation (MFN) and national treatment basis. For example, an importing country should not apply different tariffs to the same product or producers of the same product of different exporting member countries; each exporting country should face the lowest (most-favoured) tariff on a good applied by the importing country. National treatment means that each country agrees to treat foreign and domestic products and producers equally inside the country.

A second principle is that the trading system should become freer over time with tariff and non-tariff barriers (NTBs) coming down through successive rounds of negotiation. This has been achieved in large measure through the lowering of

tariffs on goods but much room exists to reduce NTBs for goods, and all kinds of barriers to trade in services.

Predictability is a third principle. This refers to the need to ensure foreign companies, investors, and governments that trade barriers will not be raised arbitrarily, and that all trade related policies are transparent to foreigners.

A fourth principle refers to making the trading system more competitive by discouraging unfair practices such as subsidizing exports and dumping products in foreign markets. Dumping occurs when products are sold in foreign markets at a lower price than in domestic markets and harm is created to industries in the foreign markets.

Finally, it is recognised that not all countries are equal and less developed countries may require special treatment; for example, longer periods for their industries to adjust to the lowering of tariffs.

How do the principles work in practice?

“Give me chastity, but not yet” is how one observer, paraphrasing St. Augustine, characterizes the WTO. Despite high sounding principles, the WTO Agreements contain an extensive range of measures that permit members at least to modify, and at times to escape, their obligations. A full explanation of how these work would require book-length treatment. Here we provide brief examples of some of the main qualifications which indicate how a member government can exercise a degree of sovereignty within the framework of rules prescribed by the agreements:

1. **Grandfathering pre-existing preferences** – This means that if, at the time of signing the agreement, a country gives some trading partners preferential treatment it can continue to do so. Thus Canada has film and television co-production treaties with individual

countries where preferences are given to the treaty countries but not to others.

2. **Regional trade agreements** – countries can be members of regional trade agreements, such as NAFTA, as well as the WTO even though there are different obligations. This represents a derogation of the MFN principle but is allowed under certain conditions.
3. **Waivers** – Waivers to obligations are permitted in certain exceptional circumstances. For instance, the United States received a waiver in the case of the Canada–United States Automotive Agreement (Auto Pact).
4. **Non-application of national treatment** – The national treatment principle does not apply to government procurement nor to the provision of subsidies for domestic production.
5. **General Exceptions** – General exceptions are permitted in cases where government measures, although restrictive of trade, are required for reasons of: public morals; human, animal, plant life and health; compliance with domestic regulations; trade in gold and silver; the products of prison labour; conservation of natural resources; protection of national treasures; and participation in international commodity agreements.
6. **National Security** – Actions can be taken to protect national security.
7. **Food and human security** – Temporary export prohibitions are permitted in the case of critical shortages of food and essentials.
8. **Balance of payments** – A country can take measures to alleviate a balance of payments problem.
9. **Safeguards and countervailing duties** – Allowance is made for safeguards against injury caused to domestic industries by sudden increases in imports of products. In addition, a country has the ability to address cases of

dumping, and to provide countervailing duties against subsidies.

10. **Concessions** – A country has the ability to reduce or withdraw concessions offered.
11. **Developing countries** – Special conditions are provided for developing countries.

Given these qualifications, does the WTO work?

As in most matters involving the WTO, the questions are short and clear while the answers are lengthy and qualified. The short answer is that it does work but requires in-depth knowledge and understanding. This means it can be costly for countries to conform to the agreements, difficult for traders to understand the rules, and rewarding for trade policy practitioners, especially lawyers and economists. Another description of the WTO is that of a multi-layered chess game played simultaneously at all levels.

As stated by the Minister of International Trade, governments “enter into trade agreements to better the lives of their citizens.” They do this not just on the basis of a blind leap of faith but because there is a sound basis to believe that such betterment occurs. Evidence of the WTO’s workability is that almost all countries in the world aspire to join – from 23 GATT members in 1947 to over 130 WTO members today – with about 30 applications outstanding. The members have agreed that the WTO should cover more types of trade. Further, members refer disputes to the WTO for adjudication and more interest groups want to become associated with the WTO – for example, those promoting labour, human rights and the environment. If it did not work, it would not attract such generally favourable attention. In fact, its success may be its undoing in that it could become too large and complex to handle its primary objectives of trade liberalization. At the same time the WTO is a work in progress and there is always room for improvement.

What are the criticisms leveled at the WTO?

The views of critics can be summarized as follows: the WTO promotes an agenda for business, especially multinational enterprises and their allies in OECD countries; smaller interest groups and those representing labour, consumers, the environment and human rights as well as the interests of developing countries are under-represented; the dispute resolution process interferes with the sovereignty of nations by ruling on domestic policies affecting issues like social services and culture; overall the WTO process is non-transparent; there is insufficient consultation with the public on trade policy matters; and countries should focus on evaluating the outcome of the Uruguay Round before engaging in further negotiations.

What is the response to these criticisms?

Sovereignty is affected any time a country voluntarily agrees to sign a treaty or join an international organization. The reason it chooses to do so is that the expected benefits outweigh the loss of sovereignty experienced. If the expectation is not realized, a country can terminate its membership, as is the case for the WTO. As the topics for negotiation have over the years moved from lowering tariffs to addressing non-tariff-barriers, more domestic policies are now subject to the disciplines negotiated in trade agreements – trade policy has become domestic policy. Recognition of what this means for individuals and interest groups within countries has become apparent as a result of the WTO’s binding dispute resolution mechanism that delivers court-like decisions. Those who have been on the receiving end of decisions resulting from complaints made by other countries, such as magazine publishers, do not like the outcome if it adversely affects their interests. Those who have initiated complaints and won applaud the process. The losers tend to get more press coverage than the winners.

Certainly business is active in putting forward its views, but so are others. In conducting this study at the request of the Government, the Committee has heard from a wide variety of witnesses including those representing farmers, labour, consumers, the environment, and human rights as well as individuals who had a non-business agenda or were very critical of business. It proved difficult, in fact, to get witnesses from individual firms to appear, although many were represented through their trade associations. (See Box 2)

The WTO has itself recognized the need to obtain

greater public support and has institutionalized this by adopting a set of guidelines (July 1996) which recognize the role NGOs can play to increase the awareness of the public in respect to WTO activities. In 1998, the Director General of the WTO announced new steps to enhance the dialogue with civil-society by providing regular briefings for NGOs, circulating NGO position papers to WTO members, and by establishing a special NGO section on the WTO Website. Additionally, annual symposia have been hosted by the WTO for the past several years with hundreds of NGO participants on trade and

Box 2 – Summary of WTO Witnesses by Organization *

Firms	12 (Total)
Industry Associations	88 (Total)
<i>Agriculture</i>	45
<i>Business and professional</i>	32
<i>Culture-related</i>	11
Governments	26 (Total)
<i>Federal</i>	15
<i>Provincial</i>	7
<i>Municipal</i>	4
Academics, Researchers and Professionals	61 (Total)
Civil society	85 (Total)
<i>Environment</i>	7
<i>Labour</i>	19
<i>Human Rights</i>	5
<i>Religious</i>	6
<i>Other</i>	48
Individuals	64 (Total)
Total number of witnesses by organization type	336
Total number of individual appearances before the Committee	425

* This table provides an approximate breakdown of those organizations and individuals that testified before the Committee for this Report. The submissions of those who did not appear were not included for simplicity's sake. Multiple representatives from the same organization have been disregarded; each organization has been counted only once. Regional chapters of national organizations have been counted as separate organizations. Government agencies and departmental divisions are counted separately, as are the professionals from the educational institution.

development/trade and environment issues.² Canadian NGOs have also begun to undertaking their own consultations with civil society across Canada.³ In both Geneva and Canada there are now processes to involve civil society more directly in trade negotiations, and the Committee's Report recommends significant further improvements to these.

The weak bargaining position of developing countries in the WTO process is widely recognized by supporters and critics. Proposals have been made to address this problem through training programs and the provision of assistance to delegations in Geneva and in handling disputes. At the same time developing countries have used the process by initiating disputes against developed countries in a significant number of instances and have been prominent among those lobbying for new negotiations. The transfer of issues from the OECD to the WTO is, in part, an indication of widening recognition that the latter is an arena where developing countries have representation.

In the five years since the passage of the Uruguay Round, there have been over 170 disputes. This may seem like a large number but it is not surprising that the expanded scope of the WTO would at the outset lead to parties testing the meaning of the obligations. Of course, this does not comfort those who have been on the losing end of dispute panel rulings. Over time, precedents set by panel decisions will condition behaviour and the number of disputes relative to world trade is likely to decline. Even now, relative to the size of and increases in world trade, the number of disputes annually is not large. Most trade takes place for Canada and other

countries within the rules which have been agreed to by countries when they decide to join the WTO.

What about transparency, public consultation, and evaluation?

The scope of the WTO agreements, their meaning, and the operation of the Dispute Resolution Understanding (DSU) have all contributed to a view that the process is inadequately transparent. Because the disputes are handled on a government-to-government basis, private interests feel divorced from the process. Supporters of the WTO, as well as its critics, are aware of this. There are proposals, including greater input from private interests, for amending the dispute resolution process which will be part of future negotiations. Legitimate debate arises over whether opening up the process would improve the functioning of the agreement, but it is recognised that the system is in the process of evolution.

One purpose of the Committee's hearings has been to increase the transparency of the WTO process as well as to learn what changes should be contemplated by the Canadian government. A great deal of information has been published on the WTO and is available in print and on the Internet, not just on the WTO Website but, for example, on the site managed by Consumers International, an organization critical of many aspects of the WTO. Part of the problem is that it takes time to absorb the available material. Some fault lies with the process, but transparency can be enhanced by personal input.

Public consultation in Canada takes place through parliamentary hearings, as in the case of the MAI and now the WTO, as well as through contact between constituents and their representatives.

² See the "Joint Civil Society Statement on the WTO High-Level Symposia on Trade and Environment and Trade and Development" appended to the March 18 brief from the Canadian Council for International Cooperation. See also WTO materials in recent Trade and Environment and Trade and Development High-Level Symposia at <http://www.wto.org/hlms/highlevel.htm>. See also Director General Renato Ruggiero's statement, "Transparency and Inter-action with Civil Society," 15 July 1998, available at the WTO web site <http://www.wto.org>.

³ The Council of Canadians, in tandem with 40 other Canadian organizations, held consultations on the MAI in the fall of 1997 with hearings in 8 cities and almost 15,000 citizens participating. (*Evidence*, Meeting No. 123, April 28, 1999, Toronto)

Increased use is being made by government departments of the Internet. Both DFAIT and Industry Canada devote part of their Websites to trade policy issues and have launched official consultative processes. Can the consultative process be improved? Undoubtedly this is possible as proposed in the Committee's first recommendation.

Evaluation of the WTO process already takes place through the trade policy review of individual members, in specialised literature in law and economics, as well as by the critics. This could be condensed and presented in a more digestible form for public consumption in order to increase comprehension of an increasingly complex process. It has been difficult to generate interest in the media and elsewhere prior to actual negotiations. In a previous Report of this Committee, it was noted that developments leading up to the MAI negotiations were known to labour as well as business interest groups in the OECD at least from 1991. Also, officials of the Minister of International Trade held consultations on the MAI with the provinces and non-governmental organizations as well as labour and business from 1995.⁴ The provinces have also provided input. British Columbia for example held committee hearings on the MAI with recommendations that form part of the current dialogue.⁵ At times the interested parties need to be more fully aware of the discussions taking place at different levels of government.

As far as future negotiations are concerned, the train has already left the station. Canada has two options: get off or try to affect the direction and speed of travel. WTO member countries have agreed to further negotiations on issues like agriculture and services. Canada as one member

has an opportunity to influence, especially at this early stage, which new items become part of the negotiations. The final agenda is not for Canada to decide unilaterally, but as in any international negotiation, will result from balancing the priorities and objectives of all member countries.

A detailed evaluation of the criticisms is not possible here. Suffice it to say that the rising standards of living over the past 50 years in many, but not all, parts of the world are partially due to a regime that promotes trade liberalization. It is as misleading to claim that trade liberalization has been solely responsible for all the benefits of modern society as it is to blame liberalization for all the defects. Moreover, almost all of the critics of the WTO think that Canada benefits from a rules-based regime for international economic relations. What each wants is a set of rules that promotes their values and goals. One reason for the increasing focus on the WTO is that – unlike many other international organizations – it has been successful in enforcing its rules. As the International Confederation of Free Trade Unions has put the challenge ahead:

*The global economy needs global rules. The global market is a powerful mechanism for dynamic development, but it can also lead to the exclusion and marginalization of millions of ordinary citizens who do not have the advantage of wealth or status. It has to be balanced by countervailing powers.*⁶

Small and medium size countries like Canada clearly can benefit from a rules-based as opposed to a power-based system, providing the rules are not loaded in favour of the powerful. What is crucial therefore is to get the right rules and to get the rules right.

⁴ See *Canada and the Multilateral Agreement on Investment*, Third Report of the Standing Committee on Foreign Affairs and International Trade, December 17, 1997.

⁵ *Report of the Special Committee on The Multilateral Agreement on Investment*, Legislative Assembly of British Columbia, December 1998.

⁶ ICFTU, Development, Environment and Trade: Statement to the High-Level Symposia of the World Trade Organization (WTO) on "Trade and Environment" and "Trade and Development," Geneva, pp. 15–16 and 17–18, March 1999.

Where can more information about the WTO and international trade issues be found?

Although the outcome of these negotiations will affect each one of us in our daily lives, we have had little opportunity to understand their content. We have not been informed by your government nor the media on the nuts and bolts of these agreements.

Elsie Dean
Evidence, Meeting No. 120
April 26, 1999
Vancouver

What has been Canada's role in the WTO?

Canada was one of the 23 countries that signed the original GATT. Since then it has participated in every round and has been actively involved in making proposals, including the creation of a "world trade organization" as had been recommended by the scholar John Howard Jackson. In the 1970s, Canada was represented in Geneva by an ambassador who had strong credentials in the political dimensions of diplomacy. One officer in the Canadian mission was responsible for GATT issues. Today, Canada has two ambassadors in Geneva, one of whom is in charge of economic affairs. Canada's ambassador is an experienced senior trade negotiator who is highly regarded by his peers both in Ottawa and in Geneva.⁷

Why is there a need for another round of negotiations?

If the WTO is considered as a work in progress from 1947 to the present, we can expect the need for change resulting from experience gained by actually implementing the agreement, especially as technology such as the Internet has altered the way in which trade takes place. Since the establishment of the WTO, negotiations have been ongoing with a series of specialized or sectoral agreements reached on basic telecommunications and information technology products in early 1997, and on financial services in December

1997. Currently, reviews are underway on regional trade agreements and on the dispute resolution process.

Members have already agreed to negotiations on a number of items, such as trade in agriculture and services. A Ministerial Conference in Seattle from November 30 to December 3, 1999 will set the agenda for the next round of negotiations slated to begin in 2000. The topics likely to be discussed are examined in the remainder of this report.

Many witnesses expressed to the Committee their concern that the WTO is lacking in transparency to the point that even the most basic information remains obscured from public scrutiny. While the WTO Agreements are public documents, it is true that information on the WTO and trade-related issues can be difficult to find without some guidance. This Citizen's Guide provides a point of departure for Canadians interested in learning more about the WTO and related issues in international trade and commerce.

As the Committee observes in its Report, future multilateral trade negotiations at the WTO will have implications for many non-traditional trade-related concerns including cultural issues, technology-driven issues, intellectual property issues, global societal values, environment, health, sustainable development, labour and human rights standards, global governance and financial stability. The evolving study of international trade is, therefore, a multidisciplinary pursuit by

⁷ For a history of Canada's role in the GATT and WTO, see Michael Hart, *Fifty Years of Canadian Statecraft, Canada at the GATT 1947-1997*, Ottawa, Centre For Trade Policy and Law, 1998, and Michael Hart, edited and with introduction, *Also Present at the Creation, Dana Wilgress and the United Nations Conference on Trade and Employment at Havana*, Ottawa, Centre for Trade Policy and Law, 1995.

definition. The broad and complex body of literature addressing the WTO and its many linkages includes the subjects of political science, international relations, economics, law, as well as interdisciplinary fields such as international political economy and environmental studies. The following provides an extensive, though not exhaustive, guide to the electronic and print sources which may be of interest to Canadians wishing to pursue these issues further.

Internet resources: Links to useful sites

The Internet offers a wealth of resources on the debate over what constitutes good trade policy, developments in the multilateral negotiating environment and 'trade and' issues such as trade and human rights. The most direct access for Canadians to the WTO, as well as the official organizing bodies for regional trade agreements and other international organizations involved in international trade is provided via the websites hosted by these organizations. Additionally, many research institutes post current working papers relevant to the work of the WTO on the web. While the focus of the following list is on Canada's trade policy, the reader will note that a significant sample of American sites and sources are included simply because they also contain relevant analysis and statistics.

All Canadian government sites, UN affiliated sites and the WTO site contain information in French. If you do not have a home computer with Internet access, inquire with your local public library regarding Internet access facilities.

The World Trade Organization

<http://www.wto.org>

For an Overview of the WTO

- Go to <http://www.wto.org>

- Under "Features" click on *WTO – An introduction* and/or *WTO – A training package*
- Under "Interactive Guides" click on and download the program *Trading into the Future – an electronic guide to the WTO and its agreements* and/or *An interactive guide to the WTO and developing countries*

Canada and international trade

Canadian International Trade Tribunal
<http://www.citt.gc.ca/>

Department of Foreign Affairs and International Trade (DFAIT)
<http://www.dfait-maeci.gc.ca>

Export Development Corporation
<http://www.edc.ca>

The NAFTA Secretariat, Canadian Section
<http://www.nafta-sec-alena.org/english/cdn/canada.htm>

Standing Committee on Foreign Affairs and International Trade (SCFAIT)
<http://www.parl.gc.ca>

Strategis – Canada Business Information Site
<http://www.strategis.ic.gc.ca>

Team Canada Inc.'s Export Source
<http://www.exportsource.gc.ca>

The Department of Foreign Affairs and International Trade (DFAIT) in May 1999 began building a sub-page for information and consultation on Canada's trade negotiations and agreements, which can be found at
<http://www.dfait-maeci.gc.ca/tna-nac/menu-e.asp>

Some key materials can be found on this site including:

- A list of selected speeches pertaining to trade matters by the Minister for International Trade, the Ambassador of Canada to the WTO, and the WTO Director-General
- Links information on the WTO Agreements, members and accession requests, disputes

settlement, the Trade Policy Review Mechanism, and WTO Ministerial Conferences

- Discussion papers on trade policy issues in the following areas: trade in goods, trade in services, competition policy, culture, government procurement, information technology/e-commerce, intellectual property and investment
- Discussion papers on the social dimensions of trade including environment, labour, development, codes of conduct, and bribery and corruption

Some key government documents:

"Canada and the World Trade Organization." Ottawa: Department of Foreign Affairs and International Trade, March 1998.
<http://www.dfait-maeci.gc.ca/english/trade/wto/53009.htm>

"The World Trade Organization: What's in it for Canada?" Ottawa: Department of Foreign Affairs and International Trade, 1998.
<http://www.dfait-maeci.gc.ca/english/trade/wto/wto-what.htm>

Canadian Culture in a Global World: New Strategies for Culture and Trade. Ottawa: The Cultural Industries Sectoral Advisory Group on International Trade, February 1999.
<http://www.infoexport.gc.ca/trade-culture/menu-e.asp>

Opening Doors to the World: Canada's International Market Access Priorities 1999. Ottawa: Department of Foreign Affairs and International Trade, 1999.
<http://wwwW.infoexport.gc.ca/section4/doorsworld/menu-e.asp>

Canada's Trade Data and Statistical Sources

The Trade and Economic Analysis Division of DFAIT
<http://www.dfait-maeci.gc.ca/eet>

Statistics Canada – Trade Data
<http://www.statcan.ca/english/tradedata>

Industry Canada – Trade Data Online
http://strategis.ic.gc.ca/sc_mrkti/tdst/engdoc/tr_ho_mep.html

United States Department of Commerce
<http://www.doc.gov>

International and Regional Organizations

Asia-Pacific Economic Cooperation (APEC)
<http://www.apecsec.org.sg/>

Association of Southeast Asian Nations (ASEAN)
<http://www.aseansec.org/>

The Caribbean Community Secretariat
<http://www.caricom.org/expframes.htm>

European Union (EU)
<http://europa.eu.int/>

European Union in Canada
<http://www.eudelcan.org/english/index.cfm>

Food and Agriculture Organization (FAO)
<http://www.fao.org/>

International Labour Organization (ILO)
<http://www.ilo.org>

International Monetary Fund (IMF)
<http://www.imf.org>

International Trade Centre UNCTAD/WTO (ITC)
<http://www.intracen.org/>

Mercosur (Southern Cone Common Market)
<http://www.mercosur.org/>

Organization of American States (OAS)
<http://www.oas.org/>

Organization for Economic Cooperation and Development (OECD)
<http://www.oecd.org>

Organization for Economic Cooperation and Development (OECD) Trade Forum
<http://www.oecd.org/ech>

United Nations Commission on International Trade Law (UNCITRAL)
<http://www.un.or.at/uncitral/>

United Nations Conference on Trade and Development (UNCTAD)
<http://www.unctad.org/>

United Nations Development Programme (UNDP)
<http://www.undp.org/>

United Nations Economic Commission for Europe (UN/ECE) – Trade Division
http://www.unece.org/trade/trade_h.htm

United Nations Environment Programme (UNEP) – Trade and Environment
<http://www.unep.ch/trade.html>

World Bank
<http://www.worldbank.org>

World Bank – International Trade Division
<http://www.worldbank.org/research/trade/>

World Customs Organisation (WCO)
<http://www.wcoomd.org/>

World Economic Forum
<http://www.weforum.org/>

World Intellectual Property Organization (WIPO)
<http://www.wipo.int/eng/main.htm>

WTO Quadrilateral Members and other National Trade Agencies

European Commission – External Relations (Trade Policy)
<http://europa.eu.int/comm/dg01/>

Japan – Ministry of International Trade and Industry (MITI)
<http://www.miti.go.jp/index-e.html>

United States Department of Commerce International Trade Administration
<http://www.ita.doc.gov>

United States Trade Representative (USTR)
<http://www.ustr.gov>

A listing of national trade agencies of OECD members is available at the OECD Trade Forum site
<http://www.oecd.org/ech/other1.htm>

Non-governmental and sub-governmental organizations

Canadian Environmental Law Association
<http://www.web.net/cela/>

Canadian Federation of Students
<http://www.cfs-fcee.ca/>

Canadian Labour Congress
<http://www.clc-ctc.ca/>

Common Front on the World Trade Organization
<http://www.sierraclub.ca/national/trade-env>

Common Frontiers
<http://www.web.net/comfront/>

Consumers Association of Canada
<http://www.mbnet.mb.ca/crm/law/cac01.html>

Consumers International
<http://www.consumersinternational.org>

Council of Canadians
<http://www.canadians.org/>

Federation of Canadian Municipalities
<http://www.fcm.ca/>
Oxfam Canada
<http://www.oxfam.ca>

Sierra Club of Canada
<http://www.sierraclub.ca/national/>

Third World Network
<http://www.twinside.org.sg/souths/twn/twn.htm>

West Coast Environmental Law Association
<http://www.vcn.bc.ca/wcel/>

Research Institutes

The American Enterprise Institute
<http://www.aei.org>

Brookings Institution
<http://www.brook.edu>

Canadian Centre for Policy Alternatives
<http://www.policyalternatives.ca>

Canadian Institute of International Affairs
<http://www.ciiia.org/>

C.D. Howe Institute
<http://www.cdhowe.org>

Centre for Economic Policy and Research
<http://www.cepr.org>

Centre for International Economic Studies,
University of Adelaide
<http://www.adelaide.edu.au/CIES/>

Centre for Trade Policy and Law
<http://www.carleton.ca/ctpl>

Conference Board of Canada
<http://www2.conferenceboard.ca/>

The Fraser Institute
<http://www.fraserinstitute.ca/>

Institute for International Economics
<http://www.iie.com>

International Law Institute
<http://www.ili.org>

Business

Business and Industry Advisory Committee
(BIAC) to the Organization for Economic
Cooperation and Development (OECD)
<http://www.biac.org>

Canadian Chamber of Commerce
<http://www.chamber.ca>

Canadian Council for International Business
<http://www.ccib.org>

International Chamber of Commerce (ICC)
<http://www.iccwbo.org>

International and Canadian Standards

International Standards Organization
<http://www.iso.ch>

Canadian Standards Association
<http://www.csa.ca>

Key books and print media sources

"Survey: World Trade: Time for another round," *The Economist*, 3 October 1998.

This Economist survey provides an overview for those interested in background on the issues at stake in future WTO negotiations. Free access to part of this survey is available on the web at:

http://www.economist.com/editorial/freeforall/library/index_surveys.html

Journals, magazines and newspapers

Multilateral trade agreements are a specialized undertaking and tend not to attract much attention in the press as a rule. Detailed, accurate information about the WTO and the concerns of member countries and other stakeholders are best found in economic, business or other academic publications as well as news sources that focus on international commerce.

Academic journals

Foreign Affairs

<http://www.foreignaffairs.org>

Foreign Policy

Journal of Economic Perspectives

<http://www.vanderbilt.edu/AEA/jep.htm>

Journal of International Economics

Journal of International Economic Law

Journal of World Trade

Journal of World Trade Law

International Economic Review

The World Economy

News Sources

Online Directory of the World's Newspapers

<http://www.mediainfo.com/emedial/>

Professional Trade Publications (subscribe or search)

<http://www.tradepub.com>

The Economist

<http://www.economist.com>

The Financial Times

<http://www.ft.com>

Inside US Trade (World Trade Online web site – free trial available)

<http://www.insidetrade.com>

New York Times

<http://www.nytimes.com>

Recent books, articles and reports

The following is a list of some key publications in the area of trade policy, law and economics:

Organization for Economic Co-operation and Development (OECD). *Joint Agriculture/Trade Workshop on Emerging Trade Issues in Agriculture*. Paris: Organization for Economic Co-operation and Development, October 1998. (Available at <http://www.oecd.org/agr/trade/>)

Organization for Economic Co-operation and Development (OECD). *Electronic Commerce Workshop A Borderless World – Realising the Potential of Global Electronic Commerce*. (Conference proceedings). Paris: Organization for Economic Co-operation and Development, October 1998. (Available http://www.oecd.org/subject/e_commerce/)

UNCTAD. *UNCTAD Trade and Development Report 1998*. New York: United Nations Conference on Trade and Development, 1998.

UNCTAD. *UNCTAD World Investment Report 1998*. New York: United Nations Conference on Trade and Development, 1998.

WTO. *WTO Annual Report 1998 – Special topic: Globalization and Trade*. Geneva: World Trade Organization, 1998.

Brookings Trade Forum 1998: Antitrust and Antidumping Rules. Washington, DC: The Brookings Institution, 1998. (Summary available at <http://www.brook.edu/es/trade/trade.htm>)

Brookings Trade Forum 1999: Governing in a Global Economy. Washington, DC: The Brookings Institution, 1999. (Not yet published but soon to be available at <http://www.brook.edu/>) Presenters and discussants include Paul Krugman, I.M. Destler, Sylvia Ostry, Joseph E. Stiglitz, Barry Eichengreen, Dani Rodrik, Anne O. Krueger, Rudiger Dornbush, Robert E. Litan and Michael Mussa.

Canada and the Multilateral Agreement on Investment. Third Report of the Standing Committee on Foreign Affairs and International Trade, December 17, 1997.

Bairoch, Paul and Kozul-Wright, Richard. "Globalization Myths: Some Reflections on Integration, Industrialization and Growth in the World Economy," in Richard Kozul-Wright and Robert Rowthorn eds. *Transnational Corporations and the Global Economy*. New York: St. Martin's Press, 1998.

Bhagwati, Jagdish. *A Stream of Windows: Unsettling Reflections on Trade, Immigration, and Democracy*. Cambridge, MA: MIT Press, 1998.

Bhagwati, Jagdish and Hudec, Robert eds. *Fair Trade and Harmonization: Prerequisites for Free Trade?* Volume I, Economic Analysis. 1996.

Bhagwati, Jagdish and Hudec, Robert eds. *Fair Trade and Harmonization: Prerequisites for Free Trade?* Volume II, Legal Analysis. 1996.

Brown, Dennis ed. *The Culture/Trade Quandry: Canada's Policy Options*. Ottawa: Centre for Trade Policy and Law, 1998.

Burtless, Gary. T. *Globophobia: Confronting Fears About Open Trade*. Washington, DC: Brookings Institution, 1998.

Cline, William. *Trade and Income Distribution*. Washington, DC: Institute for International Economics, 1998.

Deléchat, Corinne. *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*. Paris: Organization for International Co-operation and Development, 1996.

Eichengreen, Barry. *Toward a New International Financial Architecture: A Practical Post-Asia Agenda*. Washington, DC: Institute for International Economics, 1999.

Esty, Daniel C. "Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition or Exclusion?" *Journal of International Economic Law*. Vol. 1, No. 1, March 1998, p. 133.

Esty, Daniel C. *Greening the GATT: Trade, Environment and the Future*. Washington, D.C.: Institute for International Economics, 1994.

Krueger, Anne O. ed. *The WTO as an International Organization*. Chicago: University of Chicago Press, 1998.

Graham, Edward M. and Richardson, David J. *Competition Policies for the Global Economy*. Washington, DC: Institute for International Economics, November 1997.

Hart, Michael. *Also Present at the Creation: Dana Wilgress and the United Nations Conference on Trade and Employment at Havana*. Ottawa: Centre for Trade Policy and Law, 1995.

Hart, Michael. *Fifty Years of Canadian Tradecraft: Canada at the GATT 1947-1997*. Ottawa: Centre for Trade Policy and Law, 1998.

Hoekman, Bernard and Kostecki, Michel. *The Political Economy of the World Trading System: From GATT to WTO*. New York: Oxford University Press, 1995.

Howse, Robert. *Settling trade remedy disputes: when the WTO forum is better than the NAFTA*. Toronto: C.D. Howe Institute, 1998.

- Jackson, John Howard. *Implementing the Uruguay Round*. Oxford: Clarendon Press, 1997.
- Jackson, John Howard. *The World Trading System: Law and Policy of International Economic Relations*. Cambridge, MA: MIT Press, 1997.
- Jackson, John Howard and Jackson, John E. *The World Trade Organization: Constitution and Jurisprudence*. London: Royal Institute of International Affairs, 1998.
- Josling, Timothy. *Agricultural Trade Policy: Completing the Reform*. Washington, DC: Institute for International Economics, 1998.
- Keesing, Donald B. *Improving Trade Policy Reviews in the World Trade Organization*. Washington, DC: Institute for International Economics, 1998.
- Knapp, Ursula. *The General Agreement on Trade in Services (GATS): An Analysis*. Paris: Organization for Economic Co-operation and Development, 1994.
- Miner, William M. *The International Policy Environment for Agricultural Trade Negotiations*. Ottawa: Agriculture and Agri-Food Canada, 1998. (Available at <http://www.agr.ca/policy/epad/english/pubs/wp-tp/tms.htm>)
- Ostry, Sylvia, "China and the WTO: The Transparency Issue," *UCLA Journal of International Law and Foreign Affairs*. Vol. 3, No. 1, Spring/Summer 1998, p. 1-22.
- Ostry, Sylvia. *The Post-Cold War Trading System: Who's on First?* Chicago: University of Chicago Press, 1997.
- Ostry, Sylvia. *Reinforcing the WTO*. Washington, DC: Group of Thirty, 1998.
- Qureshi, Asif H. *The World Trade Organization: Implementing International Trade Norms*. Manchester, England: Manchester University Press, 1996.
- Ragnan, Subramanian and Lawrence, Robert Z. *A Prism on Globalization: Corporate Responses to the Dollar*. Washington, DC: The Brookings Institution, 1999.
- Rodrik, Dani. *Has Globalization Gone Too Far?* Washington, DC: Institute for International Economics, 1997.
- Rodrik, Dani. *The New Global Economy and Developing Countries: Making Openness Work*. Washington, DC: Overseas Development Council, January 1999. (For a summary go to <http://www.odc.org/programs/rodrik.html>)
- Ryan, Michael P. *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property*. Washington, DC: Brookings Institution Press, 1998.
- Sauvé, Pierre. *Open Market Matter*. Paris: Organization for Economic Co-operation and Development, 1998.
- Sauvé, Pierre and Schwanen, Daniel eds. *Investment Rules for the Global Economy: Enhancing Access to Markets*. Toronto: C.D. Howe Institute, 1996.
- Schott, Jeffrey, ed. *Launching New Global Trade Talks: An Action Agenda*. Washington, DC: Institute for International Economics, 1998.
- Schott, Jeffrey. *The Uruguay Round: An Assessment*. Washington, ED: Institute for International Economics, 1994.
- Schott, Jeffrey. *The World Trading System: Challenges Ahead*. Washington, DC: Institute for International Economics, 1996.
- Schott, Jeffrey. *WTO 2000: Setting the Course for World Trade*. Washington, DC: Institute for International Economics, 1996.
- Soros, George. *The Crisis of Global Capitalism*. New York: Public Affairs Books, 1998.
- Srinivasan, T.N. *Developing Countries and the Multilateral Trading System: From the GATT to the Uruguay Round and the Future*. Boulder, CO: Westview Press, 1998.

Thomas, Jeffrey S. *The New Rules of Global Trade: A Guide to the WTO*. Scarborough, ON: Carswell Publishing, 1997.

Trebilcock, Michael J. and Howse, Robert. *The Regulation of International Trade*. New York: Routledge, 1995.

Wolfe, Robert. *Farm Wars: The Political Economy of Agriculture and the International Trade Regime*. New York: St. Martin's Press, 1998.

Consultations – Adding your voice to what Canadians are saying

Trade isn't about experts and meetings in Geneva. It's about jobs and opportunities right in our own backyards. We have a strong case to present, and we hope that you use this new web site as a national clearing house on trade as we continue to consult you – and inform you – on this important issue.

Hon. Sergio Marchi, Minister for International Trade
May 1999 Ottawa

The Honourable Sergio Marchi has stated that the Government is interested in hearing from you in order to ensure that Canada's negotiating objectives fully reflect the interests of Canadians. The Department of Foreign Affairs and International Trade has subsequently initiated an online forum for public consultation on the DFAIT website. It should be noted that some formal trade policy consultation mechanisms are also in place. Regular meetings are held with provincial and territorial governments. The most recent Federal-Provincial-Territorial Trade Ministers meeting took place on February 17, 1999 in Ottawa. Trade policy and market access advice are also sought through the Team Canada Inc. Advisory Board, and on specific industry sectors through fourteen Sectoral Advisory Groups on International Trade (SAGITs).

To send comments through the 'Consultations with Canadians' comment form, go to <http://www.dfait-maeci.gc.ca/tna-nac/contact-e.htm> or send email directly to consultations@dfait-maeci.gc.ca

Alternatively, you can send your comments by mail or fax to the following address:

Trade Negotiations Consultations
Trade Policy Planning Division (EAI)
Department of Foreign Affairs and International Trade
Lester B. Pearson Building
125 Sussex Drive
K1A 0G2
Fax: (613) 944-0757

EXECUTIVE SUMMARY

CANADA AT THE WTO: ADVANCING A MILLENNIUM AGENDA IN THE PUBLIC INTEREST

Over the past decade... Canadian participation in the global trade regime has reached a new level of maturity. Canadians have become more prepared to pursue opportunities and less reluctant to accept some of the risks of a more open economy. They successfully convinced the global community to adopt a stronger institutional basis for multilateral trade cooperation, and they are at the forefront in ensuring that the WTO evolves into a forum for the governance of the global economy.

For Canadians, the need to be active in the further developments of the multilateral system cannot be overemphasized. Canada depends on and benefits from an effectively functioning trade and payments system. Its ability to play a constructive role is equally clear. But the ability to ensure that Canadian values and priorities are reflected in the evolving regime requires that Canadians analyze the issues and make their contributions early in the process. As a relatively small player, that is where they are most likely to influence the content and course of a negotiation. In short, Canadians need to be quick, early, and creative.

Michael Hart

"Canada at the Millennium Round: Forging Global Rules for a Global Economy"
(Submission, April 26, 1999, Vancouver)

The Committee's Report on *Canada and the Future of the World Trade Organization: Advancing a Millennium Agenda in the Public Interest* is the culmination of the most extensive parliamentary consultations ever conducted across Canada on the direction of multilateral trade and investment policies. The Committee's deliberations were in response to a formal request from the Minister of International Trade that we canvass the views of Canadians on issues related to the work of the World Trade Organization (WTO) and the agenda of its forthcoming Third Ministerial Conference to be held in Seattle in late 1999. It is significant that this process of parliamentary and public engagement has taken place months *prior* to firm decisions being taken on the scope, content and duration of actual negotiations. Indeed, in

undertaking this study, we were being asked to contribute to the determination of Government policy at a stage when Canadian positions are being prepared to take forward to this pivotal WTO conference at which it is widely expected that a major new round of multilateral trade negotiations may be launched.

For Canada's economic well-being as a whole, it is clearly vital that Canada be well prepared to participate in the WTO's decision-making processes, and to exercise leadership wherever possible to bring about appropriate improvements. Canada, as the most trade-oriented G7 country, has compelling reasons to pursue Canadian interests in continuing the development of an effective, transparent, and accountable multilateral trade framework, based on clear

rules that are applied fairly and equitably. Even those who are sharply critical of the WTO system and of how it has operated to date, and who therefore have strong reservations about entering into new negotiations, will agree that it is more important than ever to improve public understanding of that system, to carefully consider its impacts – increasingly reaching into domains of domestic regulation and of daily life – and to deliberate as a society on the kinds of multilateral economic governance institutions that will be needed entering a new millennium.

This is, of course, a work in progress, and the Committee's Report is but one step along a journey of furthering democratic engagement on these issues. Nevertheless, we have tried to be as inclusive as possible in listening to the views of Canadians, and as comprehensive as limited time and resources would permit in terms of our coverage of what is at stake for Canadians at the WTO level. The Report and its conclusions and recommendations therefore address not only sectors of established or potential negotiating interest from a commercial perspective, but also the broader issues – sometimes of a highly complex and contested nature – relating to institutional and process reforms, and to the cultural, social, environmental, human rights and other values-based dimensions of a globalizing trading regime. In effect, we are compelled to talk about more than just "trade" as that has been narrowly understood, but also about shaping what former senior trade negotiator Michael Hart refers to in the opening citation as an evolving "forum for the governance of the global economy".

Canadian businesses and industries involved in both established and emerging areas of trade and investment activities clearly have a primary interest in specific future negotiations within the WTO. At the same time, it is also true that the nature of the WTO system and the results of such negotiations raise major public-interest policy questions affecting the whole of Canadian civil society. Moreover, if so far public participation in trade policy processes has been weak, and sustained parliamentary attention lacking, now is the time to remedy this situation and to put in place constructive channels for representation and dialogue which will be accessible and of benefit to all Canadians.

The Report's Introduction faces that public challenge head on. In the context of a new international political economy of trade negotiations and of debates over globalization, we need to develop open and transparent processes which will also have to be more inclusive than ever before in terms of both the issues addressed and the actors represented at the table. Within Canada, this means finding imaginative ways to build common ground that allows both the private sector to prosper and progress to be achieved on the social dimensions of trade. Multilaterally, it means reforming and reinforcing institutions like the WTO, so that the less well off members of the international community are not marginalized, and so that the democratic accountability of policy structures is strengthened.

In listening to a wide cross-section of Canadians – whose voices appear in the "What Canadians are Saying" sections that begin every chapter of this Report, the Committee was impressed by the evidence of

growing citizen engagement across the spectrum of trade and investment-related issues. Many people were motivated by public-interest concerns. There was also little complacency among those who were more confident about the recent direction of trade and investment liberalization policies. Because the issues go beyond better market access for Canadian exports, which have enjoyed a decade of record growth; they are also about building a better and sustainable global trading system over the longer term from which all can benefit.

While there are obviously differences of views, which were sometimes passionately expressed, we found some common themes resonated throughout the testimony. The Report articulates these as 10 “principal and principled public messages” as follows:

- ***Getting the international rules right matters but is no simple matter.***
Trade rules must strive for fairness and be arrived at democratically.
- ***Process counts at all levels.***
We need trade policy forums that encourage public participation and foster social consensus.
- ***Values are important.***
We need to work towards an international trade system that supports standards of social justice, environmental sustainability, and human rights.
- ***Promotion of trade interests must be in the public interest.***
The pursuit of exports and commercial opportunities needs to be combined with appropriate protection of consumer and other public interests.
- ***Policy choice matters.***
There needs to be space within the trade rules to allow for an appropriate exercise

of democratic judgement on matters within the public interest.

- ***Preparation matters.***
Sufficient time is needed for public input and for establishing a clear mandate for Canadian negotiators.
- ***Negotiations must be conducted in a fair and accountable manner.***
The interests of all countries need to be taken into account and there should be appropriate provisions for public scrutiny of negotiating processes.
- ***Transparency and predictability are critical to the functioning of the system.***
All participants need to have access to accurate information and to have confidence in the application of the rules.
- ***Trade impacts should be subject to regular reviews and evaluation.***
Better knowledge in this area is needed in order to inform better policies for the future.
- ***Effective enforcement of and coherence among international obligations will be essential.***
There is a need to ensure compliance with the rules and to clearly define the WTO’s mandate in relation to other international bodies in order to avoid costly overlaps, gaps or conflicts.

A first priority that the Committee perceives will be to institute a long-term public and parliamentary process that is capable of providing the democratic oversight that is needed over an expansive range of trade and investment policy issues in which complexity and change are a given. Accordingly, the Committee’s first two recommendations are designed to address that fundamental requirement: both to improve the representation of civil society within trade policy development processes, along with the means of regular dialogue and feedback, and

to ensure that Parliamentary institutions are sufficiently able to examine the results of international trade and investment negotiations *before* any binding agreements that Canada enters into take effect within domestic legislation. In short, consultation in future must involve adequate public preparation, public knowledge, and public consent exercised through the role of elected representatives.

The Committee then turns its attention in Part I of the Report to the general framework issues of the multilateral trading system, the context for pursuing Canadian negotiating objectives, and the structures for the implementation of obligations and the settlement of disputes. Chapter one of the report focuses on the governance institutions of the WTO system. We heard from supporters as well as critics of the WTO about a number of deficiencies and areas in which structural and process improvements could be made to increase the WTO's effectiveness, transparency and public accountability. Others also addressed the "constitutional" nature of the WTO's mandate and how far it should extend into matters which involve domestic regulation and often, too, the jurisdiction of subnational governments. The legal powers of the WTO regime compared to the weaker GATT system which it succeeded are attractive from the standpoint of greater enforceability of international commitments. However, this is also a problem for those who question the dominant free-trade premises of the system. The Report considers some important constitutional principles which should be the subject of explicit review by WTO members: namely "sovereignty" and 'subsidiarity' in defining the future scope and

limits of the WTO's rule-making mandate; 'universality' in terms of the accession of new members and application of global standards; 'transparency' and 'accessibility' to open the system to the public; 'contestability' and 'sustainability' as norms to govern the behaviour of global markets; 'coherence' to coordinate the work of the WTO with the functions of other parts of the multilateral system.

The Committee believes that Canada should take a leadership role at the Seattle Conference in promoting attention to systemic reform issues. To that end, we recommend that a high-level process be established to make concrete proposals to the next biennial WTO Ministerial Conference, in time for these to be considered prior to the conclusion of any prospective new round. Chapter 1 also examines in detail the need for specific improvements to the WTO's governance structures, including the creation of an executive committee that would be broadly representative of the membership. The case is made for strengthening the capacities of the institution to manage a growing burden of demands, and also for assistance to the least developed countries to allow them to participate more fully. The Report agrees that relations with non-governmental organizations (NGOs) also need to be further developed as part of improving public access and accountability. Democratic parliaments, precisely because they are elected to represent the interests of their societies, ought also to have a greater presence and role in achieving a collective oversight of the WTO and its activities. The Report therefore recommends that, as part of an overall institutional review, high-level

consideration be given to the idea of creating an associated parliamentary mechanism – a Standing Conference of WTO Parliamentarians – which could be composed of representative delegations from the parliaments of member countries.

Chapter 2 of the Report surveys the multilateral process currently underway leading up to the possible launch of a new WTO negotiating round when ministers from at least 134 countries (probably more, and perhaps including China) meet in Seattle in December. Reviewing the changing international context and the many elements at play in regard to scope and timing of negotiations beyond those already mandated on agriculture and services, the Committee suggests the following as elements to guide a strategic approach to advancing Canadian interests within the WTO negotiating process:

- As a first priority, seeking improved access to world markets for all Canadian goods and services and to high technology and knowledge-based products, innovations and services that will enhance the productivity and globally competitive position of diversified Canadian enterprises, including small business exporters, and bearing in mind that merchandise and services trade are also closely linked to investment flows.
- Working with other countries to ensure that existing WTO Agreements are clarified where necessary and made as transparent as possible and that any regional trading arrangements are fully consistent with the WTO.
- Pursuing improvements to the WTO dispute settlement system, while safeguarding its integrity, preventing overload, and taking care not to compromise its effectiveness.

- Remaining flexible on the questions of the scope and timing for a possible new round, but being prepared to engage in the ongoing discussions of all of the items which may potentially be involved.
- Giving careful consideration to proposals being brought forward in the context of the broad-based negotiation favoured by Canada's main trading partners and which appears to offer the best possible avenue for Canada to achieve a balanced outcome in forthcoming negotiations covering the "built-in agenda" as well as non-tariff measures and possible new issues.
- Adjusting strategy to meet the evolving concerns of domestic constituencies through improved mechanisms for close, regular consultations with all stakeholders and with civil society along the lines recommended earlier in the Report.

Of course negotiations will serve little purpose if the resulting commitments are not implemented, and if conflicts arise over the rules which threaten to overwhelm the system or erode confidence in it. The Committee observes in Chapter 3 that the effectiveness and credibility of the WTO depends in large measure on all members respecting their obligations to other members, and working to solve problems cooperatively. In particular, there is a recognition that many developing countries, and in particular the least developed, will require increased technical assistance in order for them to acquire the capacity to carry out existing undertakings under the Uruguay Round agreements, much less to assume new ones if a new round is launched. A number of witnesses urged that Canada consider carefully the needs of the South in this regard. There were also recommendations to make better use of the

WTO's Trade Policy Review Mechanism (TPRM) in order to thoroughly evaluate country situations and encourage remedial action. With respect to implementation issues within Canada, the Committee emphasizes the need to consult closely with the provinces and other levels of government.

The WTO's dispute settlement system is considered one of the crowning achievements of its establishment in 1995; however, critics of its record since that time have a number of complaints, notably in regard to its lack of transparency and its impact in ruling against domestic policy measures in certain countries including Canada. Cases involving culture, environmental and public health considerations have been particularly controversial. Contentious matters include the scientific basis of certain product standards, whether rules favouring liberalized trade should have paramountcy over other normative standards, whether non-governmental third parties should have access to panel processes, and potential conflicts over the interpretation of various agreements and their applications. While the system is in many ways an improvement over the GATT and is still young, the Committee recommends consideration of further reforms.

Part II of the Report moves on from these broadly systemic and institutional questions to address some principal areas of negotiating interest for Canada going into the Seattle Conference. The first chapters focus on areas which have already been established as priorities for negotiation. The later chapters enter the more uncertain territory of some of the new and emerging issues on

which there may, or may not, be agreement to include within a future negotiating agenda.

Chapter 4 on agriculture and agri-food issues observes that the promise of the Uruguay Round's breakthrough Agreement on Agriculture remains in many ways unfulfilled, notably in regard to market access, export subsidies, and non-tariff barriers linked to sanitary and phytosanitary (SPS) measures. The Committee's hearings confirmed that Canadian agricultural groups want to see these problems rectified before undertaking new commitments. The Report also underlines a number of Canadian negotiating objectives: elimination of export subsidies; greater transparency in the rules governing market access; opening up of markets on the basis of the "zero-for-zero" option for industry sectors which can take advantage, such as grains and oilseeds; a ceiling on domestic support; increased transparency of state-trading enterprises; and an objective scientific basis for SPS measures, particularly in regard to genetically modified organisms.

While differences persist among different sectors of the industry, the Report notes that there is a convergence of view on many objectives as indicated above, and that consensus-building will be further enhanced by a consultation process which permits all sectors to continue to analyse and refine the Canadian position throughout the forthcoming negotiations. Canadian agriculture has made important strides in adapting to a liberalized trading environment. On that basis, Canada can take a forceful position into the WTO negotiations, focusing on achieving realistic results prior to the expiry of the "peace clause" in 2002. The Report recommends

ways to advance the interests of all parts of the industry, building on the solid preparatory work which has already been done by agricultural and agri-food groups.

In Chapter 5, the Committee examines ongoing market access issues as they relate to trade in goods other than agriculture and encompassing a wide variety of both tariff and non-tariff issues including most of the agreements on non-tariff measures (NTMs) that were negotiated in the Uruguay Round. The Report calls for close consultations with all stakeholders, including provincial governments, in order to identify as quickly as possible those markets, products and trade barriers which Canada should target for improved access negotiations in a forthcoming round, which ideally would be broad-based and reflect a large consensus among WTO members. The Report identifies a number of areas where Canada must begin, in cooperation with the Canadian export community, to fine-tune our negotiating objectives, giving particular attention to unresolved issues in commercial relations with the European Union, Japan and other principal non-NAFTA trading partners. Among the sectors highlighted by witnesses are fish and seafood products, non-ferrous metals, wines, and wood products. On the import side, in a balanced negotiation, developing countries will be among those seeking as much free access as possible to the markets of developed countries including Canada. While the views of import-sensitive industries will need to be canvassed, in principle the Committee supports the appeals made by some witnesses for Canada to open its markets to aid in the development process.

Observing that all of the Uruguay Round non-tariff agreements are potentially subjects for negotiation, the Committee concludes that Canada's goal should be to ensure that existing WTO Agreements are clarified where necessary and made as transparent as possible. Any new agreements which may be reached in a future round should likewise be clear, precise and free from ambiguity. Furthermore, many of these issues require an approach that seeks the full cooperation of all levels of government within Canada (provincial, local, and aboriginal) prior to any negotiations, since they may be expected to implement any new commitments. A particular caution flag was raised in regard to the area of government procurement.

Chapter 6 on services issues focuses on the operation of the General Agreement on Trade in Services (GATS) which governs trade in services and was one of the major accomplishments of the Uruguay Round. Most views presented to the Committee looked for a new round to lead to further liberalization and expansion in sector coverage under the GATS and argued that Canada should be prepared to take a major role in this exercise. The Report urges completion of work which is already underway to identify, in close collaboration with service industries and provincial governments, Canada's specific priority interests in export markets in terms of countries, types of services, methods of delivering a service, movement of people, and impediments or barriers to doing business (both private and governmental). This exercise should also be used as an opportunity to review Canada's current reservations with

the aim of identifying items of particular sensitivity or areas where differing provincial requirements might be reduced, as well as to review the schedules of other countries to identify items where improved market access for services might be sought. In this context, the Committee's recommendations stress the need to identify the linkages that exist between the various services sectors, the need for further work on mutual recognition agreements, subsidies and safeguards and for the development of better statistics relating to services trade.

In Chapter 7 on cultural issues the Committee turns to an exploration of one of the most sensitive areas approaching possible new negotiations at the WTO level. The Report takes as a point of departure the February 1999 Report of the Cultural Industries SAGIT which set out four possible approaches for the treatment of culture in future trade negotiations and supported the option of creating a special instrument on cultural diversity. Witnesses before the Committee were generally agreed that the previous policy approach of pursuing an exemption for culture in trade agreements was no longer feasible and therefore supported the SAGIT's proposal. The Committee concurs with that analysis and recommends that Canada seek allies among other countries to promote the idea of a new international instrument on cultural diversity, if feasible within the WTO framework.

The point is also made that culture has linkages with a number of other trade issues, discussed elsewhere in the Report, such as electronic commerce, the Internet, new media, basic telecommunications services and intellectual property. Indeed Canada has

already initiated discussions with other countries on cultural trade. These issues will need to be part of the continuing discussions in the development of new terms and conditions to be included in a new cultural instrument, whether that can be accomplished within or remains outside of the formal WTO framework.

Chapter 8 on emerging technology-driven issues outlines how rapid developments in information technologies are defining a range of issues, often referred to in connection with the Internet, electronic commerce, and new media. The WTO already has agreements that relate to trade in goods, trade in services, basic telecommunications services, information technology and intellectual property – all of which are relevant to these issues of the future. Until further research has been done, for example on whether electronic commerce involves trade in goods, trade in services or both, the Report suggests that it would be advisable to continue to explore ways of handling the Internet and electronic commerce within the framework of existing agreements rather than to contemplate developing a special agreement. At the same time, it will be important to build on the progress made in liberalizing trade in telecommunications, the agreement on information technology and intellectual property, all of which touch on these new aspects of information technology; some relating to delivery mechanisms and others to the content of what is distributed.

Chapter 9 of the Report on intellectual property issues observes that the introduction of an agreement on the trade-related aspects of intellectual property rights (TRIPS) as a result of the Uruguay Round negotiations had

as a principal objective to provide a mechanism for the enforcement of commitments which countries had made in numerous other accords on this subject. Developing countries have been given longer periods for phasing in the implementation of various obligations. The TRIPS agreement, like the GATS and many other parts of the GATT/WTO framework, is very much a work in progress. It also contains some potentially vast and extremely complex aspects, including controversial outcomes which drew fire from some witnesses, notably in regard to rights being accorded to large transnational corporations that may not serve the public interest or protect human rights. The Report considers that more intensive consultation is needed with all stakeholders within Canada in elaborating a coherent national policy which could then form the basis of a sound position for international negotiations.

The last Chapter in this part of the Report, Chapter 10 addresses the future place of investment and competition policy issues, observing that since the demise of the Multilateral Agreement on Investment (MAI), proposals have been made to renew these negotiations in the WTO. While there has been only tentative support for such a move, some witnesses recognized that commitments on investment are already part of the WTO, especially through the agreement on Trade Related Investment Measures (TRIMS) and in the commercial presence provisions of the GATS. At the bilateral level, Canada has more than twenty bilateral investment treaties. The NAFTA also has a chapter devoted to investment which was the object of many concerns raised by witnesses in regard to its investor–state provisions. The Report

recommends that these problems receive serious attention and not be repeated in other agreements. As well, in moving to the multilateral level, rather than develop a comprehensive agreement on investment at this time, the Committee believes that a preferable and more realistic route would be to absorb, refine and build on the WTO commitments already made on investment.

The Report observes that competition policy addresses private actions by firms that lead to restrictions on international as well as domestic trade. These may result from mergers or restrictive business practices such as cartel agreements, abuse of dominant position in the market, and exclusive distribution arrangements. Trade agreements to date have dealt primarily with actions taken by governments that restrict trade. Competition policy is seen to be complementary to trade policy in achieving greater trade liberalization in the context of internationally contestable markets, and attention is now required to incorporate competition policy in the WTO. While the Committee agrees that it may be premature to introduce a special agreement in this area, witnesses proposed a series of steps that need to be taken in order to build on the cooperative arrangements that exist between competition authorities in different countries. At the same time, those countries without competition laws should be encouraged to introduce them.

Part III of the Report contains three of the most challenging chapters in the Report which enter into the often highly sensitive linkages to the “social dimensions” of trade and investment. The Report fully acknowledges the powerful criticisms which

have been levelled at the existing trade policy frameworks and structures in this regard. We heard from a number of witnesses who accused the WTO system of reinforcing a dominant ideological orientation that has been detrimental to social and environmental goals in particular. Yet the Committee is also realistic enough to recognize the many obstacles which will have to be surmounted in order to make actual and not simply rhetorical progress in advancing these other goals within the multilateral system – not the least of which will be the resistance of many developing-country governments and others who remain suspicious of good intentions as a potential disguise for protectionism that may be of doubtful public benefit. Moreover, no analysis that expects to be taken seriously, however philosophically or morally compelling on the surface, can ignore the details of how to incorporate these dimensions within the trading system in ways that are both appropriate and potentially capable of being negotiated by agreement among a large number of countries. There are legitimate reservations as well about the proper role for the WTO, even if reformed along the lines suggested earlier in the Report, in making and/or enforcing rules in areas which may be only indirectly related to trade.

While Canada should actively seek to ensure that trade and investment policies do no harm, the use of trade measures for non-trade purposes may be a very limited and blunt instrument of redress. Clearly these are large problems which do not permit the illusion of simple solutions.

Chapter 11 provides an initial response to the concerns expressed by many witnesses that there must be a much greater

integration of universal values that are important to Canadians — for example, environmental protection and resource sustainability, public health and safety, food security, social justice, gender equity, respect for all human rights, including that of democratic participation. It also points out that most WTO members are also members of other international standard-setting organizations (for example, all are members of the ILO which is also headquartered in Geneva), and have already agreed to multilateral obligations in all of these areas. The Report suggests a way forward to begin to integrate normative principles which are universally-based into the WTO regime; as a first priority to ensure that trade rules and practices do not conflict with but are instead mutually supportive of major multilateral obligations in the areas of environmental and health protection, labour rights, and human rights generally; over the longer term to develop mechanisms that would involve the WTO in promoting positive compliance with multilateral obligations that are central to the social dimensions of trade.

Chapter 12 addresses in detail the linkages to trade of environmental and health matters, and the ongoing attempt to incorporate sustainable development principles within the mainstream of the WTO framework. Although the decisions which led to the establishment of the WTO also created a Committee on Trade and Environment, it is widely seen as having underachieved. Moreover a number of key issues remain unresolved: for example, compatibility between the obligations in multilateral environmental agreements and GATT/WTO rules, and conflicts over the

interpretation of key exceptions to the general national treatment principle which permit discriminatory environmental, health and conservation measures under certain conditions. Many critics point to several controversial GATT/WTO disputes panel rulings against such measures as revealing that the system is badly biased and flawed.

The Committee clearly recognizes that there is much work left to do and reviews a number of proposals for reform, with particular appreciation for the comprehensive agenda presented by the Winnipeg-based International Institute for Sustainable Development. The Report also sees opportunities to take advantage of Canadian environmental expertise and capacities for leadership, to promote the export potential of Canadian environmental industries, and to use market-based incentives to support sustainable development goals. In approaching future WTO negotiations, the Committee recommends further national consultations and use of the Environmental SAGIT to build common ground around a proactive agenda to take to Seattle. That agenda should include elements to: give high-level attention to sustainable development within the WTO's structures; strengthen environmental impact assessment through creative use of the TPRM; reduce distorting subsidies; clarify rules and improve transparency within an open disputes resolution process; uphold multilateral environmental obligations under WTO rules and improve multilateral disciplines for trade-related environmental measures concerning process and production methods (PPMs); establish bridges between the WTO and international bodies with environmental

and health protection mandates; involve the WTO in coordinated multilateral action to strengthen the capacity of poorer countries, especially the least developed to meet higher environmental standards.

Chapter 13 turns to the even more contentious issues of labour standards, and human rights generally, which a majority of the WTO's members have yet to accept as forming part of its agenda. The Committee notes that there is an emerging international consensus around a core list of international labour standards which embody universal human rights principles, and that all WTO member countries have already accepted to work toward increased compliance with these ILO standards through their adoption at the ILO's June 1998 plenary conference of the *Declaration on Fundamental Principles and Rights at Work*. The key problem, as many witnesses pointed out, is a continued lack of enforceability of ILO obligations compared to those of the WTO. Such weakness, along with North-South divisions and suspicions over protectionist motives, has long bedevilled advocacy of a "social clause" within the WTO framework. The Report considers ways to get beyond that stalemate and move forward several options for Seattle. The practical challenge is how to make concrete collaboration with the ILO on the trade-related aspects of international core labour standards part of the WTO's working agenda. As a step forward, the Committee urges Canada to work with like-minded countries to build up WTO-ILO cooperation in regard to implementation of the 1998 *Declaration*, use of the TPRM to assess labour rights impacts, and improved ILO representation within WTO processes,

utilizing its expertise, advisory and technical assistance functions.

This Chapter of the Report also addresses the larger questions of how universal human rights standards as a whole should be recognized by the WTO's constitutional framework. While the WTO's mandate is trade, in a coherent multilateral system WTO rules and practices should at least not be at odds with efforts to advance the observance of internationally-recognized human rights obligations. A seminal and very thorough presentation to the Committee by the Montreal-based International Centre for Human Rights and Democratic Development argued forcefully the case that such obligations ought to have paramountcy in international law. Many other witnesses wanted to see Canada adopt a progressive agenda which could turn the WTO from being part of the problem to becoming part of the solution. The Report recommends that Canada assess the human rights impacts of trade and investment commitments and negotiations, and seek to ensure that there are no conflicts with measures to protect and progressively realize international human rights, while also encouraging other countries to do the same.

Finally, the chapters in Part IV of the Report address several key issues for the future of the multilateral trading system in terms of: development equity, the role of regionalism, the relationship to financial stability, and, ultimately, the place of the WTO within a more coherent, sustainable and democratic system of global economic governance.

Chapter 14 considers the aspirations and changing role of developing countries within the the international trading system and specifically the WTO framework, reporting on the impact of the Uruguay Round on these countries, the main issues raised at the most recent WTO symposium on trade and development, and the relationship of regionalism and multilateralism. The Report notes that developing countries now comprise about 80 percent of WTO membership and, as such, constitute a formidable bloc within the WTO. Accordingly, any future WTO round will need to include a focus on meeting the concerns of these countries within its agenda. Many witnesses made reference to those concerns and urged Canada to adopt multilateral trade policies, especially for the least developed countries, supportive of equitable treatment and development outcomes. The Report concurs with that view and recommends that the Government study the proposals put forward in this regard and examine the results of these studies with interested domestic stakeholders in formulating Canadian policy positions.

The concluding Chapter 15 brings together the issues of trade liberalization and financial stability in the search for a new approach to governing the global economy of the next millennium that completes the vision first outlined at the Bretton Woods Conference over a half century ago. In the wake of the fallout from the Asian crisis and spreading effects of financial market turbulence, this Chapter also refers back to the diagnosis and proposals in the Committee's 1995 Report on reforming international financial and monetary systems,

and which now appear more relevant than ever. A number of witnesses argued the need to rethink existing approaches to global economic management, both to preserve an appropriate scope for democratic policy choice within countries, and to begin to construct an coherent and accountable institutional “architecture” among nations that is capable of achieving the multilateral cooperation that is now vital in so many areas. The WTO, the International Financial Institutions, and the United Nations system, however flawed and in need of reform in each of their parts, must begin to work together more closely in order to coordinate a process of institutional improvements to the multilateral system as a whole.

The Committee urges Canadian leadership in advancing constructive ideas in this regard, while suggesting that Canada’s own international policy instruments would also benefit from more coordination and coherence. Leading up to the Seattle Conference, the Report calls on Canada to support increased participation by appropriate UN bodies and UN-recognized civil society organizations in major discussions surrounding that event and flowing from it throughout forthcoming negotiations. The Report also welcomes former WTO Director General Renato Ruggiero’s call to use the UN’s planned Millennium Summit in the year 2000 as an occasion to launch a serious effort to address global governance challenges and to consider how globalizing and liberalizing forces might be made supportive of sustainable human development goals.

Ultimately, the Committee comes back to the sentiments expressed at the beginning of this summary and carried through our Report – which is that advancing a WTO millennium agenda in the public interest challenges Canada and Canadians as never before in terms of: building a more open and democratically accountable public process; reforming the institutions of the international trading system along similar lines; putting forward clear negotiating positions in an expanding number of established and emerging areas; integrating core universal social and human rights values into the framework of the trade regime; and, not least, working towards a coherent design for the kind of multilateral governance that will be increasingly necessary in the next century.

In conclusion, Canada’s interests are best served by seeking an innovative leadership role in shaping the international agenda and in participating in the negotiation of future international economic agreements from a standpoint of Canadian public values. Recognizing that, as the editors of a just-released volume on Canadian foreign policy affirm: “What influence Canada has must be exercised early and must rely on superior preparation, far-sighted analysis, inspired ideas, and skilful coalition-building.”¹ The Committee’s Report will have served its purpose if it stimulates efforts in that direction. We have reason to be confident because we believe Canadians are up to the task.

¹ Fen Osler Hampson, Michael Hart, and Martin Rudner, eds., *Canada Among Nations 1999 A Big League Player?*, Oxford University Press, Toronto, 1999, p. 23. Six of this volume’s chapters bear directly on matters discussed in the Committee’s Report.

LIST OF RECOMMENDATIONS

INTRODUCTION: PREPARING CANADIANS FOR THE GLOBAL TRADE CHALLENGE

Recommendation 1 Intro-16

The Government should review the existing trade advisory system in order to broaden its representation of societal interests and to support the objectives of:

- conducting regular consultations with the broadest possible range of stakeholders within Canada in collaboration with all relevant Departments involved in policy formulation at the federal level; and
- initiating independent studies of significant matters relating to international trade and investment agreements; and
- providing timely information and feedback to Parliamentarians and citizens during all pre-negotiation, negotiation, implementation and review phases of international trade and investment agreements.

Recommendation 2 Intro-16

Parliament's institutions, and in particular this Committee, must also be able to examine fully all future trade and investment negotiations, most importantly at the WTO level, prior to Canada implementing into domestic law any binding agreements resulting from such international trade and investment negotiations.

CHAPTER 1: TOWARDS A WTO FOR THE NEW MILLENNIUM

Recommendation 3 1-10

That, at the Seattle Ministerial Conference, Canada promote the establishment of a high-level group on the future of the WTO with a mandate to propose improvements to the WTO system at the next ministerial conference. As a first priority, the following constitutional elements should be reviewed: 'sovereignty' and 'subsidiarity' in regard to the proper scope and limits of future WTO intervention; 'universality' of membership obligations; institutional 'transparency' and 'accessibility'; application of 'contestability' and 'sustainability' principles to the trading system; 'coherence' among all parts of the WTO system and with the mandates of other international organizations.

Recommendation 4 1-14

That at the Seattle Ministerial Conference, Canada push for a commitment to examine long-term institutional improvements to the WTO system aimed at strengthening democratic governance capacities, specifically by:

- bolstering the capacity of the WTO Secretariat;
- increasing the availability of capacity-building assistance, as needed by the least developed countries, in order to allow for greater participation by all members in WTO processes;
- creating a WTO executive committee composed on a broadly representative basis;
- developing more institutionalized relations with civil-society organizations and continuing to improve public access channels; and
- giving consideration to the establishment of a Standing Conference of WTO Parliamentarians, composed of representative delegations from member-country parliaments.

CHAPTER 2: NEGOTIATING AT THE WTO: PROCESS AND PRIORITIES FOR THE NEXT ROUND**Recommendation 5 2-12**

The Government should adopt a strategic approach based on the following guidelines to prepare for, advance and defend Canadian interests throughout the negotiations:

- seek improved access to world markets for all Canadian goods and services through tariff reductions and new and improved agreements on non-tariff issues;
- support initiatives for a broad-based negotiation as the best approach for Canada to achieve a balanced outcome in a new round, especially for agriculture and services;
- remain flexible regarding time limits for a new round at least until the agenda is agreed;
- continue to rely on the WTO rules-based system to protect Canada's trade interests;
- seek improvements in and protect the integrity of the WTO dispute settlement system; and
- include civil society more fully in the consultation and negotiation process.

CHAPTER 3: IMPLEMENTATION OF THE WTO AGREEMENTS AND DISPUTE SETTLEMENT

Recommendation 6 3-8

That the Government assist developing countries, and in particular the least developed countries, to implement their commitments and increase their ability to participate in WTO activities and future negotiations, by contributing human and financial resources:

- toward technological assistance programs for developing countries and the least developed countries, established in the framework of the WTO or in which the WTO participates; and
- toward any other initiative or program with similar objectives.

Recommendation 7 3-10

The Government should ensure that implementation of obligations under the WTO agreements becomes the joint effort indispensable to the WTO's success, and to this end that it:

- approach Members that have not yet fully implemented their obligations and encourage them to do so as quickly as possible;
- participate in the proceedings of the Trade Policy Review Mechanism and voice its opinion on the consistency of Members' trade policies with their obligations;
- participate in the activities of the WTO's various bodies and in those forums stress the importance of Members' living up to their obligations; and
- use the dispute settlement mechanism to require another Member to live up to its commitments, when this is deemed necessary.

Recommendation 8 3-13

The Government should continue its practice of informing and consulting the provinces on issues relating to liberalization of trade under the auspices of the WTO and other international forums that deal with trade, and involve them in the negotiation procedure where it is desirable to do so, to protect their interests in their spheres of jurisdiction, while protecting the interests of the Canadian federation as a whole.

Recommendation 9 3-17

The Government should consider the issue of overlap in the implementation of WTO Agreements to determine whether interpretation rules should be proposed to address this overlap.

Recommendation 10 3-19

The Government should carefully examine the issue of participation by non-member third parties in WTO dispute settlement procedures and raise this issue at the right time before the WTO for its review.

Recommendation 11 3-20

The Government should consider the issue of potential conflict between paragraphs 21(5) and 22(2) of the Dispute Settlement Understanding and submit its recommendations to the WTO at the appropriate time.

CHAPTER 4: AGRICULTURE AND AGRI-FOOD ISSUES

Recommendation 12 4-15

Canada should open the discussion in the upcoming multilateral trade negotiations on agriculture by demanding that all signatory countries begin by respecting their current obligations.

Recommendation 13 4-15

Canada should also make sure that the new rules on agricultural trade are transparent and apply equally to all countries according to their respective commitments.

Recommendation 14 4-15

In the upcoming trade talks, Canada should endeavour to maximize access for Canadian farm exports, but without jeopardizing its ability to maintain orderly marketing systems or its flexibility in developing national farm support programs, and especially without using agriculture as a whole or a specific agricultural product as a bargaining chip.

Recommendation 15 4-16

The Committee endorses the Canadian trade position of using science as the ultimate reference for sanitary and phytosanitary measures, and in the area of agricultural biotechnology, particularly in the case of genetically modified organisms. However, given the impasse sometimes created by the absence of consensus on how to interpret the precautionary principle, and the negative impact that this could have on Canadian farmers, the Committee recommends that the Canadian Government carefully analyze emerging trends in the area of assessment of risks associated with biotechnology.

- Recommendation 16** 4–16
- The stakeholders in the agriculture and agri–food sector, as well as all other affected sectors and Parliament, should be regularly consulted on possible changes in Canada’s initial bargaining strategy in order to analyse the impact of the proposed changes.
- CHAPTER 5: ONGOING MARKET ACCESS ISSUES**
- Recommendation 17** 5–15
- The Government, in close consultations with the business community and provincial governments, should identify as quickly as possible those markets, products, and trade barriers that Canada should target for improved access negotiations in the next round.
- Recommendation 18** 5–16
- Since, in the Committee’s view, a broad-based round of WTO negotiations appears to offer the best approach for Canada to achieve a balanced outcome in the negotiations, the Government should work towards reaching a consensus in this regard within the WTO.
- Recommendation 19** 5–16
- The Government should, working closely with Canadian exporters, focus its tariff and non–tariff goods negotiations in the next WTO round on our major trading partners including the United States, the European Union and Japan, with particular attention to fish and seafood, non–ferrous metals, wines and wood products.
- Recommendation 20** 5–17
- The Governments should undertake early consultations with Canadian firms producing developing country import–sensitive products, especially goods from the least developed countries, with a view to providing improved access to the Canadian market for these goods.
- Recommendation 21** 5–17
- The Government should be well prepared to enter into negotiations respecting all of the goods related non–tariff agreements; moreover, Canada’s participation in these discussions should be closely coordinated with the provinces to ensure that, where necessary, any undertaking agreed upon can be effectively implemented.

CHAPTER 6: SERVICES ISSUES

Recommendation 22 6-11

The Committee strongly urges the Government to complete its identification of Canada's specific priority interests in the services export markets as the basis for intensive consultations with the private sector and provincial governments in the lead up to the Seattle Conference.

Recommendation 23 6-11

The Government should examine the reservations and exemptions on the Canadian schedule with a view to identifying items of particular sensitivity or areas where differing provincial requirements might be reduced. At the same time, the schedule of other countries must be examined to identify items where improved market access for services might be sought and Canada should be prepared to engage in consultations and/or negotiations in these matters.

Recommendation 24 6-12

Recognizing the interrelationships between the various sectors in the services field, the Government should identify the likely impacts of its negotiating policy choices for one sector on other sectors, and explain them in detail for all stakeholders to take into account in their consideration of the issues.

Recommendation 25 6-12

The Committee urges the Government to delineate all of the issues involved relating to mutual recognition agreements for professional bodies, so that it will be in a position to engage in substantive discussions of this topic during the next WTO round.

Recommendation 26 6-12

The Government should be prepared to engage in discussions during the next round directed to possible GATS rules on subsidies and safeguard practices.

Recommendation 27 6-12

The Government should work with private-sector services firms, the provincial databases, and Statistics Canada to improve the services database as quickly as possible.

CHAPTER 7: CULTURAL ISSUES**Recommendation 28 7–11**

In view of the variety of issues on culture raised during the testimony, the Government should initiate discussions with other countries on the range of trade-related topics to be included in any new international agreement on cultural diversity. These should include the Internet, basic telecommunications services, intellectual property, market access, investment, and private restrictions on trade.

Recommendation 29 7–11

In future trade negotiations, the Government should pursue the policy alternative contained in the Cultural SAGIT Report for a new international instrument on cultural diversity, if feasible within the WTO framework.

CHAPTER 8: EMERGING TECHNOLOGY-DRIVEN ISSUES**Recommendation 30 8–9**

The Government should support the pursuit of negotiations on e-commerce, the Internet, and new media within the context of existing WTO agreements.

Further research should be undertaken in determining the particular issues affecting the major sectors affected by e-commerce such as retail and wholesale trade, professional services, education, the cultural industries, and others. Attention should be given to ensuring the appropriate controls on anti-social content on the Internet.

In addition, the Government should promote:

- further liberalization of the telecommunications sector;
- expansion of the Agreement on Information Technology; and
- measures to ensure appropriate protection of intellectual property traded as e-commerce.

CHAPTER 9: INTELLECTUAL PROPERTY RIGHTS IN THE CONTEXT OF THE WTO**Recommendation 31 9–7**

The Government should continue its consultations with the parties concerned so that it can develop a coordinated national policy on intellectual property that represents all Canadian interests. The Committee recommends that policy be defended in the upcoming WTO negotiations.

CHAPTER 10: INVESTMENT AND COMPETITION POLICY ISSUES

Recommendation 32 10–9

In view of the concerns arising from the interpretation of “expropriation” in the investor–state provisions of the NAFTA (Chapter 11), the Government should ensure the incorporation of a narrowly–defined concept of expropriation in any future negotiations on investment in the WTO

Recommendation 33 10–11

In the event that the mandate of the Working Group on Trade and Investment within the WTO be renewed, the Group’s workplan should focus on refining and extending the commitments already made with respect to investment.

Recommendation 34 10–14

In view of the expansion of international trade and investment, including cross–border mergers involving large companies and the application of competition policy to national jurisdiction, the Government should:

- work with like–minded countries to collect more information of actual examples of anti–competitive practices affecting trade;
- encourage the introduction of competition policy regimes by countries that presently have none and the enforcement of policies by those that do have them; and
- work towards a common set of principles for inclusion in an agreement on competition policy with a view to their being expanded and refined over time.

CHAPTER 11: THE WTO AND THE PROMOTION OF SOCIETAL VALUES GLOBALLY

Recommendation 35 11–10

Canada should put forward options for the integration of trade–linked social dimensions within WTO constitutional principles, agreements, and activity structures. A first priority should be to ensure that the relationship of all existing, and any prospective, WTO rules and practices to the major multilateral obligations in the areas of environmental and health protection, labour rights, and human rights generally is mutually supportive. In the longer term, consideration should also be given to the positive use of WTO mechanisms to promote greater compliance with these obligations.

CHAPTER 12: LINKING TRADE, ENVIRONMENT AND HEALTH, AND SUSTAINABLE DEVELOPMENT

Recommendation 36 12-14

Given that progress on trade and environment issues cutting across many areas of WTO negotiations may be critical to the success of a new round, and the need – following the example of the national consultations on agriculture – to seek further common ground within Canada, the Government should make full use of the Environmental SAGIT for the explicit purpose of developing a coherent and proactive Canadian agenda to take to the WTO Ministerial Conference in Seattle.

Recommendation 37 12-14

In preparing the Canadian position for Seattle, the Government should in particular study proposals to:

- raise the profile of sustainable development issues within the WTO's work program through high-level attention;
- strengthen environmental impact assessment, including through more creative use of the Trade Policy Review Mechanism;
- achieve early results in areas where trade liberalization and environmental objectives can be mutually reinforcing (i.e. subsidies reduction);
- establish bridging mechanisms to international bodies with environmental and health protection mandates;
- work to clarify ambiguities in existing rules, to open up the dispute resolution process to more environmental expertise, and to improve transparency;
- work towards the clarification of the WTO rules to clearly uphold obligations under multilateral environmental agreements, and provide better multilateral disciplines governing trade-related environmental and health measures including regulations and other initiatives (i.e. voluntary codes) pertaining to process and production methods;
- strengthen the capacity of the WTO in coordinating action with other international agencies to assist poorer countries, especially the least developed, in meeting higher standards of environmental review and protection.

Recommendation 38 12-14

Where appropriate, Canadian delegations to WTO meetings should include recognized expertise in environmental and health matters, and such expertise should also be present on Canadian negotiating teams throughout all future negotiation processes.

CHAPTER 13: LINKING TRADE, LABOUR STANDARDS, AND HUMAN RIGHTS

Recommendation 39 13-10

The Government should work with other like-minded countries to promote closer cooperation between the WTO and ILO, including:

- building support for the June 1998 ILO *Declaration on Fundamental Principles and Rights at Work* through all appropriate means and forums;
- seeking improvements in the TPRM to address labour rights impacts; and
- seeking improved ILO representation in WTO processes along with utilization of its expertise and its advisory and technical assistance capabilities.

Recommendation 40 13-12

In reviewing existing international trade and investment commitments, and in preparing positions for future negotiations, the Government should assess human rights impacts on an ongoing basis, in particular seeking to ensure that nothing in them conflicts with Canada's international human rights obligations or with measures to protect and progressively realize rights which are affirmed under international law. Canada should also encourage other WTO members to do the same.

CHAPTER 14: TRADE LIBERALIZATION, DEVELOPMENT AND REGIONALISM

Recommendation 41 14-10

The Government should support the launching of a new round of negotiations which fully includes developing countries with a view to promoting an open, stable, world economy that will facilitate expanded world trade and sustainable development on an equitable basis.

Recommendation 42 14-10

A number of specific issues of concern to developing countries for the forthcoming negotiating round were identified both by witnesses and in the recent WTO symposium. Bound duty-free treatment for the export products of the least developed countries received particular attention. All of these proposals require very careful study and review by the Government prior to the Seattle meeting and through the course of negotiations. The results of these studies should be examined jointly with interested domestic stakeholders in formulating Canadian policy positions vis-à-vis developing countries for the new round.

Recommendation 43 14–10

The Government should, both in the lead-up to the Seattle meetings and throughout the resulting negotiations, adopt positions that ensure the compatibility of regional trading arrangements with the WTO.

CHAPTER 15: TRADE, FINANCE AND GLOBAL STABILITY – IN SEARCH OF A NEW “BRETTON WOODS”?

Recommendation 44 15–11

The Government should, on an ongoing basis, explore policy options related to the future place of the WTO within a reformed multilateral framework of global governance, in particular its relationship to the Bretton Woods International Financial Institutions (the IMF and World Bank) and to the United Nations system.

Recommendation 45 15–11

Canada should work with as many WTO Members as possible, in line with the reforms recommended in this Report, to seek institutional improvements for the purposes of achieving greater coordination and coherence among the activities of the WTO and those of other international organizations.

Canada should, in addition, support increased participation by appropriate United Nations bodies and UN-recognized civil-society organizations in the major discussions leading up to, during, and following the WTO's Third Ministerial Conference in Seattle. Canada should also seriously examine former WTO Director General Ruggiero's call for the UN's Millennium Summit to be an occasion for re-examining the international architecture overall and for adopting a global plan of action to harness the positive momentum of globalization and freer trade to the goals of sustainable human development for the benefit of a better common future.

INTRODUCTION: PREPARING CANADIANS FOR THE GLOBAL TRADE CHALLENGE

"What Canadians are Saying"

...there is a great deal of anxiety among Canadians across this country about the direction of the global economy and the emerging role of the WTO. After hearing and reviewing much of the testimony presented at these hearings, I can safely say there is a profound and disturbing sense of unease among many Canadians today concerning the direction this country has been taking down the path of economic globalization.

Maude Barlow, Council of Canadians
Tuesday, March 2, 1999

...free trade has to mean more than production rationalisation for transnational oligopolies. While consumers and others can be liberated from local monopolies and other inefficiencies through trade, care is needed. The goal of a (true) free trade agreement is worth pursuit, but 'the devil is in the details' of an agreement. The devil may even be in the main objectives if consumers and others are excluded from the process.

Robert Kerton, Consumers' Association of Canada
Thursday, March 4, 1999

...we must provide for systematic co-operation with social groups, businesses and provincial governments. We will be turning to the provincial governments a great deal. Regardless of whether we are talking about the alcoholic beverage market, government procurement or Crown corporation purchasing, there will be a very strong demand, particularly from our American colleagues, to have greater access. In my opinion, we must therefore, right from the start, ensure that the provinces are on board and we must work closely with them.

Michel Audet, Chambre de commerce du Québec
Wednesday, March 24, 1999 Montreal

...in order to ensure that the Canadian public feels that the WTO operates in an open, democratic and transparent manner that serves Canada's interest, public consultations such as the present one are laudable. Citizens' conferences, a democratic public consultation process already familiar in France, Denmark and Germany, might also be considered.

Sylvestre Manga and Professor René Côté, Université du Québec à Montréal
Tuesday, March 23, 1999 Montreal

I am ... concerned about the fact that the WTO is closed to the general public and also non-governmental organizations. It only hears through its tribunals from governments who are in dispute. NGOs can only be heard if governments endorse their submissions which is not very likely to happen. This fact needs to be changed because the issues that are brought before the WTO have an impact on the citizens of the countries represented there, be it negative or positive.

Carol Monk
Friday, April 30, 1999 Windsor

Through the diminishing role conferred by economic dictate on the nation state, the globe is being reformed into a borderless world. Who voted for this? Rather than seeing this as being just a mechanistic evolution we can't do anything about, it's clear that this serves the interest of those with wealth and connections. Democracy as we know it is becoming irrelevant. The logic of how global corporate and financial leaders view the democratic process is that people exercise their franchise by consuming. Accountability is becoming based on purchasing rights, not voting rights.

Brian O'Neil, Oxfam Canada
Wednesday, March 24, 1999 Halifax

One of the words we're bombarded with quite a bit in this discussion is the word globalization, which is an interesting word because it implies first of all that this process is somehow a natural and inevitable process.

David Greenfield
Friday, April 30, 1999 Saskatoon

...the particular forms which the process of globalisation takes on are not inevitable and predetermined givens, but rather the result of institutionalised processes and negotiations. The numerous parameters which accompany each new situation are political constructions which create constraints but also open new possibilities for change.

Professor Bonnie Campbell, Department of Political Science, Université du Québec à Montréal
Thursday, March 25, 1999 Montreal

We need to take a step back and have a full and transparent examination of the consequences of this model of economic globalization.

David Ridley, Hospital Employees' Union
Monday, April 26, 1999 Vancouver

...we've always taken the position we want to be at any table. We want to be involved in discussions. If we were drafting an international arrangement on trade around the world, we would draft it much different[ly] than what is being done today.

Robert White, Canadian Labour Congress
Tuesday, April 27, 1999 Toronto

These trade policies will only serve to further disconnect our peoples from the land and resources by granting an interest in the waters, lands, forests, minerals, plants, fish and animals which sustain us to companies and investors who have never set foot upon our soil, who have never sustained and taken care of the land, who have no interest in the land aside from the money it can provide them.

Chief Stuart Philip, Union of British Columbia Indian Chiefs
Monday, April 26, 1999 Vancouver

It doesn't matter any more what Canadians think the Canadian cultural policy should be, or the Canadian environmental policy should be, where conflicts arise with a greatly expanded domain of international trade agreements that now deal with all kinds of things that have very little to do with trade, investment measures, intellectual property rights, and investment being among them....we have, in consequence of entering into these multilateral agreements, ceded parliamentary and sovereign authority to institutions that reside outside of Canada and that are not accountable to Canadians.

Steven Shrybman, West Coast Environmental Law Association
Tuesday, April 27, 1999 Vancouver

...we need impartial studies by independent researchers, to examine all the areas affected by our headlong rush into globalization – investment, employment, environment, food safety, health care, labour standards, national sovereignty, human rights and, above all, democracy.

Dr. Ross Johnson
Tuesday, April 27, 1999 Vancouver

Canadian sovereignty is under direct threat from Canada's ascension to bilateral and multilateral treaties in general and multilateral trade and investment protection agreements in particular...These agreements bind Canada into the indefinite future, but the process by which such agreements are negotiated is subject to no parliamentary oversight and is conducted by unelected officials with an exceedingly broad mandate conferred upon them by the Crown...

Stephen Kerr, Concerned Citizens
Tuesday, April 27, 1999 Toronto

...I've been here for three hours and I haven't heard who's really gung ho on the World Trade Organization yet, and I'm wondering if this is the response you're getting across the country. And if it is, I wonder if it represents the response of the majority of Canadians. And if it does, I wonder if it's going to influence government policy at all.

Jan Norris
Friday, April 30, 1999 Saskatoon

...the Canadian government should strive for a transparent process in future negotiations that allows for the review of agreements by the public prior to ratification.

Malcom Matheson, Canadian Union of Public Employees, Saskatchewan
Friday, April 30, 1999 Saskatoon

What I want from my government is not a slicker communications strategy, but a more fair and intelligent trade strategy.

Dr. Olive Johnson
Tuesday, April 27, 1999 Vancouver

Linking Trade and Canadian Foreign Policy Goals in a Changing International Economic Environment

In announcing public consultations on future international trade negotiations under the auspices of the WTO and the FTAA, Minister Marchi affirmed that: "We enter into trade agreements to better the lives of our citizens."¹ There is little doubt that participating in the robust growth of global trade flows, increasingly governed under GATT/WTO rules since 1947, has contributed very substantially to the aggregate material wealth of the Canadian economy. From the data in Box 1, and as recently released in *Opening Doors to the World: Canada's International Market Access Priorities 1999*, Canadian trade performance appears impressive.

- A seventh consecutive year of record-setting Canadian export growth to over \$367 billion in goods and services in 1998;
- Annual export and import growth of 8.1% and 6.4% respectively, far outpacing GDP growth, with exports now equivalent to over 38% of GDP – making Canada "the most trade-oriented country in the G7/8";
- Indications that the composition of trade is becoming more diversified, knowledge-intensive and value-added, with positive net effects on overall economic and employment growth;
- Even stronger increases in inward and outward flows of direct investment – the latter has exceeded the former since 1996; in 1998 inflows to Canada were \$22.9 billion while Canadians invested a record \$39.8 billion abroad – which will help to "pave the way for future trade";
- Similar indications of net benefits from these expanding two-way capital flows for aggregate economic and employment growth.

Notwithstanding the effects of the Asian crisis and continuing financial-market volatility which are dampening global output and trade prospects,² the Government's analysis forecasts another positive year for Canadian trade and investment growth in 1999. Clearly, in order for this to continue, it is vital to maintain and enlarge access for Canadian products, services, and investments in world markets. The submission of the Alliance of Manufacturers & Exporters Canada reflected a general view of Canadian business in identifying this as a central policy objective going into trade negotiations, along with non-discriminatory treatment within a "fair, efficient and effective" trading system based on "greater transparency in the implementation of rules."³ It was suggested that practical improvements to WTO structures and dispute resolution processes should be carefully thought out in order to keep the system abreast of the realities of the international business environment, while allowing Canadians to continue reaping the economic benefits from rules-based trade and investment liberalization.

A number of other witnesses from the private sector gave examples of Canadian export successes in highly competitive fields and identified barriers which they would like to see brought down further through new multilateral negotiations. In return, of course, Canada must offer a reasonable degree of reciprocal access to its own markets. Witnesses from business and industry associations, along with most agricultural organizations and trade policy specialists, were in general agreement that a new and wide-ranging WTO round is required in order to make progress on their priority issues. Leading U.S. trade analyst Jeffrey Schott went further in suggesting in his testimony to the Committee on May 12,

¹ Department of Foreign Affairs and International Trade, Press Release No. 22, Ottawa, February 8, 1999.

² The WTO in its most recent assessment of the global trade outlook suggests that the general marked slowdown in trade growth experienced in 1998 will likely carry over into weak expansion in 1999 (Press Release, Geneva, April 16, 1999).

³ "Priorities for the Millennium Round of WTO Negotiations", Submission, Alliance of Manufacturers & Exporters, April 30, 1999.

1999 that a more continuous approach to the negotiating process may be needed in order successfully to manage its ever-expanding agenda in coming years.⁴

Beyond such considerations, to which the Committee will return in Chapters 2 and 3, and in sectoral detail in Part II, the more fundamental question is: does this burgeoning commercial and negotiating activity meet the Minister's demanding test of making "better the lives of our citizens"? If not, what else needs to be taken account of in the trade policy development process, and how?

Under a system of transparent and impartial rules, the theory is that liberalized exchanges will encourage efficient resource allocation, productive specialization, and will increase collective welfare. However, a large number of witnesses during our hearings argued that the actual operation of the trading system and recent international trade agreements have left many people behind or even worse off. In other words, the terms and conditions of today's vast trade and investment flows were viewed as deeply problematic from a human and environmental standpoint. While many other factors are in play, it was repeatedly alleged that recent trade developments have coincided with increasing income inequalities, a fraying of social safety nets, accelerated ecological deterioration, and a weakening of governments' necessary public-interest role in protecting the rights of ordinary citizens and consumers within an increasingly integrated international marketplace

that is often dominated by large corporate entities and still leaves much to be desired in meeting standards of fair competition.⁵

Both trade policy experts and concerned individuals, supporters and critics of trade liberalization, agreed that an active Canadian policy response is required in shaping the international trade agenda so that it truly serves Canadian foreign policy objectives of shared prosperity, human security, and values such as the promotion of cultural diversity, human rights, and democratic development. The Canadian Council for International Cooperation and the International Centre for Human Rights and Democratic Development were among those who urged that the development of Canada's multilateral trade policies proceed in coherent integration with the fulfillment of Canada's United Nations commitments and obligations. It is worth noting that Renato Ruggiero's final public comments as WTO Director General (referred to by Canada's Ambassador John Weekes, who chaired the WTO's General Council during 1998, in his parting comments to the Committee on May 11, 1999), were precisely preoccupied by the need to construct new global approaches for managing such linkages – and accompanied by the suggestion that proposals for improvement be addressed by the forthcoming UN Millennium Summit.⁶ The Committee will come back to this subject in other parts of the Report and in the final chapter.

The first witness at our first roundtable on March 2, 1999, Professor Robert Wolfe, anticipated this reflection on the purposes and

⁴ Jeffrey Schott's remarks were based on his introductory chapter "The World Trade Organization: Progress to Date and the Road Ahead," in the seminal volume edited by him, *Launching New Global Trade Talks: An Action Agenda*, Special Report 12, Institute for International Economics, Washington D.C., September 1998.

⁵ Tony Clarke of the Polaris Institute made the point in his testimony of March 2, 1999 that 52 of the top economic entities in the world are transnational corporations and over two-thirds of the U.S. \$ 7 trillion in global trade involves the over 45,000 transnational corporations (TNCs) which now exist; half of that occurring in the form of intra-firm transactions. Testifying on May 11, Ambassador Weekes pointed to "UN statistics [which] show that the sales of foreign affiliates of multinational companies now exceed the total value of world trade in goods and services." Given that trade and investment are now "virtually inseparable" in international business decisions, some investment and competition policy issues can hardly avoid being addressed by the trading rules.

⁶ See "Parting Statement by the Director-General of the WTO H.E. Mr. Renato Ruggiero at the General Council Meeting on 14 April 1999" and its annex "Beyond the Multilateral Trading System", Address to the 20th Seminar on International Security, Politics and Economics, Institut pour les hautes études internationales, Geneva, 12 April 1999 (available on the WTO Web site at <http://www.wto.org>).

mandate of the multilateral trading system when he argued that the WTO ought to be a central instrument of Canadian foreign policy, given its post-war origins in a compromise forged between free trade and the welfare state, and the current imperative for a new global compact capable of widening the "circle of prosperity while maintaining social cohesion" (*Evidence*, Meeting No. 93, March 2, 1999). Yet the Committee subsequently heard from many doubting Canadians who perceive that the social bargain has broken down, and that current globalizing liberalization trends have gone too far in compromising "the right of democratic governments to manage economies and to regulate in the public interest." The Canadian Labour Congress brief, presented by outgoing president Bob White in Toronto on April 27, spoke for many when it drew from this the conclusion that:

It is time for WTO rules to be changed to restore a balance between liberalization, and protection for workers and for society as a whole against transnational corporations and the workings of global markets. ... Canada should not support new liberalization initiatives until a strong social and environmental framework is put in place, and this should be the central focus of the coming WTO round. (Submission, Canadian Labour Congress, April 27, 1999, p. 1-2)

The Government's 1995 policy statement *Canada in the World* correctly anticipated that "foreign policy will be driven more than ever by the domestic demand for a better, freer, and fairer international environment for trade." Given the

changes in that environment which are simultaneously revolutionizing business practice and adding new issues on to the policy agenda, trade negotiators will be under tremendous pressure to accommodate a widening array of sometimes conflicting objectives. Experienced scholars and practitioners of Canadian trade policy who appeared before the Committee (Michael Hart, Ivan Bernier, Gilbert Winham, Peter Clark, Sylvia Ostry, to name but a few) all stressed that the WTO system and negotiating processes, and Canada's participation within these constantly evolving arrangements, will have to be more inclusive than ever before in terms of issues and actors. Nationally this means finding ways to work towards a common ground which allows the Canadian private sector to develop and prosper while also making progress on the social dimensions of trade. Globally, it means reforming and reinforcing the institutions of the multilateral system so that poorer and weaker members are not marginalized, and so that these institutions are in practice able to cope with rising demands from all quarters in an open, responsible and more democratically accountable way.

The Committee's first recommendations will accordingly address these primary challenges which are a precondition for maintaining broad public support and achieving successful policy outcomes. At this point, we make the obvious, but often overlooked, observation that trade policy structures in Canada and internationally will undoubtedly need increased capacity to take on these tasks, and that governments will have to commit substantial intellectual as well as material resources to their accomplishment.

Responding to the Globalization Debate

...What role can [the WTO] play, along with other international institutions, in developing a coherent approach to globalization? ...

This emerging global system is very new, but the vision behind it dates back 50 years. ... our globalizing world of falling barriers, rising trade, borderless technologies, and widening circles of interdependence is in many ways fulfilling that postwar vision. Trade has expanded fourteen-fold since 1950, while production has grown six-fold. A quarter of the world's output is now traded – compared to just seven per cent in 1950. Over one trillion dollars moves around the planet every day. ...

Globalization is transforming international relations, not just our economies. And this new system requires us all to adapt. ... while the new WTO is an essential part of the answer to globalization, it is not sufficient [since] globalization is raising a whole new set of questions about how to manage interdependence. ...

There are many criticisms of this globalizing world and the voices of concern often seem to prevail over the messages of opportunity. But no one offers a rational alternative to the main challenge, which is to improve the management of this interdependent world. ...

We are now seeing the rise of a world trading system – rules-based, not power-based – at a time when the call for an improved system of international governance is more and more insistent.

– Renato Ruggiero, “Beyond the Multilateral Trading System” April 12, 1999

Within this valedictory by the former WTO Director General are many of the seeds of an intensifying debate over the controlling forces of globalization to which Canadian policy must respond. Proponents of continued transnational market liberalization are acutely aware of a growing public backlash given, as Michael Hart's submission outlined in some detail, the increasing scope of its intrusiveness into domestic spheres of regulation with many of the conflicts being played out in the trade field.⁷ Indeed, that problematic domestic-global interface was a dominant theme running through the April 1999 Brookings Trade Forum on “Governing in a Global Economy” that included an important paper on the future of the WTO submitted to the Committee by another former senior Canadian trade official, Sylvia Ostry.

What are the stakes in this debate? Former U.S. official C. Fred Bergsten observes that a rapid increase in market integration and a fear of losing out in the global competition for capital has “induced virtually all countries, whatever their prior policies or philosophies, to liberalize their trade (and usually investment) regimes.” In terms of domestic socio-economic impact, he frankly accepts that a rising dependence on trade spurred by globalization – an effect which should be even more pronounced within Canada – has been accompanied by “the stagnation of real incomes and a regressive shift in income distribution: the United States has created tens-of-millions of new jobs, but the median family income, despite a pickup in the last couple of years, is still lower today than a generation ago and only the top 20 percent of the population is unambiguously better

⁷ Submission, Michael Hart, April 26, 1999, Vancouver.

off.” The Committee heard similar statistics applied to the Canadian situation. Nevertheless, Bergsten argues that only a fraction of the problem can be blamed on globalization and that a retreat into protectionism – a real threat given Congressional unilateralist tendencies and U.S. trade and current account deficits that will likely reach record levels of more than U.S. \$ 300 billion this year – would only make matters worse for everyone, domestically and globally.⁸ Some of our witnesses might take issue with that conclusion, but clearly the relationship of globalized trade to living standards and social equity at risk is a central issue. Equally clearly, very real economic insecurities and popular anxieties are being generated by the pressures and pace of the international economic changes which are already proceeding or promoted as part of a liberalization agenda.

What is the appropriate economic and *democratic* policy response? While there is much attention, as *Opening Doors to the World 1999* puts it, to “getting the international rules right” at the WTO, Stephen Clarkson warned the Committee in Toronto that, without an adequate democratic process, international trade rules could end up entrenching, rather than replacing, power asymmetries. In short, they could be a “constitutional” cure that is worse than the disease.⁹ Michael Hart, while viewing an increasing scope for global regulation as compelling, also accepts the requirement for a set of rules “that provide national governments with the ability to exercise democratic oversight of the

operation of the global market.”¹⁰ Harvard University economist Dani Rodrik, the noted author of *Has Globalization Gone Too Far?*, whose work was cited by several witnesses, makes a persuasive case for incorporating into multilateral economic disciplines a sufficient flexibility for policy pluralism that is responsive to democratic judgments in different countries. He also argues the necessity of recognizing “a perception, often based on fact, that the rules of the international economy are being written by business interests, with labor, environmental groups, and nongovernmental organizations (NGOs) largely excluded from the process. ... As we think of reforming the governance of the global trading system, we would do well to think of ways to redress this imbalance.”¹¹

It is precisely because the agenda of recent trade negotiations and GATT/WTO practices are seen as having privileged multinational enterprises over broader public interests that the Committee encountered some considered skepticism about the merits of new WTO negotiations. For example, the Canadian Environmental Law Association and the Sierra Club of Canada, both members of the Common Front on the World Trade Organization¹², were among over 450 NGOs endorsing a recent call for a moratorium on such negotiations pending a comprehensive democratic review of social impacts to date.

The NGO statement contends that the push for further liberalization and the inclusion of new issues by the WTO will only exacerbate the problems resulting from an acceleration of globalization

⁸ Bergsten, *The Global Trading System and the Developing Countries in 2000*, Working Paper May 1999, Institute for International Economics, Washington D.C. (This paper is based on his presentation to the WTO’s March 1999 High-Level Symposium on Trade and Development in Geneva.)

⁹ *Submission*, Stephen Clarkson, April 27, 1999.

¹⁰ Hart, *op. cit.*, p. 5.

¹¹ Rodrik, “The Debate over Globalization: How to Move Forward by Looking Backward”, in Schott, ed., *Launching New Global Trade Talks*, p. 38. See also his paper for the Brookings Trade Forum, “Governing the Global Economy: Does One Architectural Style Fit All?” (April 1999).

¹² The CELA and Sierra Club submissions were made in Toronto while in Vancouver Steven Shrybman of West Coast Environmental Law presented a lengthy critical guide to the WTO which was prepared for the Common Front that also includes the Council of Canadians and the Polaris Institute.

processes.¹³ Nevertheless, given at least some faith in the principles of the multilateral trading system and its capacity for reform, there is a compelling argument that the WTO's defects and trade-related problems can only be addressed through new comprehensive negotiations involving the WTO. Indeed, this was the case put to us by Jeffrey Schott in outlining, as one of the rationales for a new round, the fact that:

... public concerns about the effects of globalization (including expanded trade and investment) on domestic production and employment, and on national regulatory policies in such areas as labor and the environment, threaten to undercut support for new WTO initiatives in the United States and other countries. Trade is now regarded as a necessary part of the solution to problems in these areas, even if trade pacts are not the primary channel of action. Simply put, governments will face increasing problems in sustaining political support for new trade talks if the trade-related aspects of these issues are not added to the WTO agenda.¹⁴

What the Committee draws from this fundamentally important debate is that the agenda for future WTO negotiations, whatever their timing and shape, must from the outset include a package of institutional and process reforms, about which we will have more to say at the end of this section and in Chapter 1.

Preparing for Seattle and Beyond: The New Politics of International Trade Negotiations

An extremely important consideration in preparing Canadian positions for the Seattle Conference is, not only the scope of an

increasingly complex and contentious potential agenda, but the necessity to widen the circle of participants both internationally and domestically. When the previous Uruguay Round was launched in 1986, the GATT had fewer than 100 members, parliamentary attention was minimal, and the notion of "civil society" representation was foreign to official trade policy discussions. Even then, it proved very difficult to get consensus for negotiations to begin, and the whole unwieldy process nearly collapsed on several occasions. This time around there is much that is different and much else that is demanding to be accommodated.

In terms of how countries approach the negotiating context, they must take into account that there will be at least 134 Member States, and another 30 or so candidate countries, involved in the WTO's proceedings. In all, over 160 countries will be engaged so that one can truly begin to speak in terms of global negotiations leading to global rules. And all of these countries' governments will be challenged to come to grips with an expanding range of regulatory issues on how the deeper integration of open world markets can be made to adhere to stronger multilateral norms of fair as well as free competition – bringing into play values of environmental and social responsibility, consumer and public health concerns, respect for labour and other human rights, recognition of cultural pluralism, sensitivity to technological adjustment, and improvements in business practice, accountability, and corporate governance. As Michael Hart has written, "the trading system's basic rules and procedures will need to be upgraded to reflect the desirability of engaging all participants and concentrating on rule making rather than concession swapping."¹⁵

¹³ *Statement from Members of International Civil Society Opposing a Millennium Round or a New Round of Comprehensive Trade Negotiations*, April 23, 1999 (as attached to the submission of the Canadian Environmental Law Association, April 28, 1999). For an earlier NGO critique see also the *Joint Statement on the WTO High-Level Symposia on Trade and Environment and Trade and Development* which was appended to the Submission, Canadian Council for International Cooperation, March 18, 1999.

¹⁴ *Submission*, Jeffrey Schott, *Towards the Millennium Round*, May 12, 1999.

¹⁵ Michael Hart, "Negotiations in Prospect: Crafting Rules for a Global Economy," September, 1998, p.27.

In effect, this requires moving towards a global social compact around trade and investment issues that goes well beyond mercantilist bargaining among different sectors of the business community. As Hart elaborated to the Committee in Vancouver, in previous negotiating rounds, Canadian trade officials concentrated mainly on trying to find a balance between export and import interests. That will no longer work. The new political economy of trade negotiations, he emphasized, must finally pay serious attention to the concerns brought forward by the social critics and must address the equity along with the efficiency sides of the trade equation. Pierre Sauvé, an Organisation for Economic Co-operation and Development (OECD) expert on international investment issues now teaching at the Harvard Kennedy School, told the Committee that the demise of the Multilateral Agreement on Investment (MAI) was a "useful failure," not least because it demonstrated the need to pursue an early and intensified social dialogue in order to impart political legitimacy to intergovernmental negotiations. Pointedly he observed:

the coming of age of Internet-based policy advocacy by non-governmental organizations (NGOs), particularly those concerned with environment, labor and human rights issues (but also public interest groups concerned with consumer and development issues). NGOs cut their teeth as never before during the course of the MAI negotiations and their presence and voice will be a mainstay of all future WTO negotiations.¹⁶

These developments carry some large implications for how Canadian trade policy processes are conducted, which must necessarily involve other levels of government – not only provincial and

territorial but also aboriginal peoples and municipal governments – legislators, and diverse "civil society" constituencies within Canada.

Gerald Shannon, Canada's lead negotiator during much of the Uruguay Round, drew the lesson that good preparation must include the following elements:

- There is a need to get a clear grip on Canada's strategic interests now, and that means close consultations with business, industry, and labour groups, as well as the provinces, and non-governmental organizations.
- Canada's approach to a range of public policy issues needs to be thoroughly aired domestically because it is important that Canadians understand what makes sense for Canada. (*Submission*, March 2, 1999, p.14)

However, a number of witnesses observed that this is precisely where past practice has been seriously deficient and where current practice continues to fall down. Many contended that a broader, more representative, and transparent process of regular consultation and feedback needs to be instituted. Elizabeth Smythe proposed to the Committee in Edmonton that an outdated and narrowly-based International Trade Advisory Committee (ITAC) / Sectoral Advisory Groups on International Trade (SAGIT) system be completely restructured since: "Increasingly trade issues cross sectors entirely and have implications for a great many Canadians. ... In addition, trade disputes and ongoing regional and multilateral organizations in a range of organizations mean that consultations need to be ongoing and cover the whole policy process from agenda formation through negotiation, to implementation and dispute resolution."¹⁷

¹⁶ *Submission*, Pierre Sauvé, May 12, 1999, p. 4.

¹⁷ *Submission*, April 28, 1999, p. 26. In addition to the overall International Trade Advisory Committee (ITAC), there are currently 14 Sectoral Advisory Groups on International Trade (SAGITs) covering the following areas: advanced manufacturing; agriculture, food and beverage; apparel and footwear; Canada/U.S. border issues; cultural industries; energy, chemicals and plastics; environmental [matters]; fish and sea products; forest products; information technologies; medical and health care products and services; mining, metals and minerals; services; textiles, fur and leather. There is also an SME (small and medium-sized enterprises) Task Force. SAGITs meet intermittently or in some cases rarely. There is no group on the "social dimensions" of trade.

Professor Smythe added that a more integrated inter-departmental approach is required at the federal government level from the beginning. (*Submission*, Elizabeth Smythe, April 28, 1999, Edmonton, p.6) Better representation of other levels of governments — including municipal and aboriginal peoples' governments — was a point stressed by some witnesses. The importance of representing provincial interests in negotiations was highlighted in a brief to the Committee from David Cook of the University of Prince Edward Island. The Committee met with several ministers of the Alberta Government in Edmonton, who indicated their desire for an intensified and more formalized interaction with the Federal Government around these issues. That was also one of the messages communicated by the Western Premiers meeting that took place in late May.

With respect to representation generally from "civil society," which includes an extremely wide range of voluntary associations and citizen groups, many witnesses believe strongly that they are speaking to public-interest issues which must be addressed, and not merely on behalf of "special interests." For example, spokespersons for the Consumers' Association of Canada and the Public Interest Advocacy Centre indicated how consumer organizations and their international networks might be brought into revamped consultative processes with benefits for the creation of a fairer marketplace as a whole. Similar arguments were advanced by environmental and labour organizations, among others.

The Committee is aware that Canadian civil society organizations have been playing leading roles internationally in mobilizing critical concerns around new trade and investment agreements.¹⁸ We take to heart the challenge from Maude Barlow of the Council of Canadians during our first roundtable on March 2 that "there

is an urgent need to develop real mechanisms for effective democratic participation in federal policy decisions regarding international trade, investment and finance. Unless this happens, peoples' anxieties and fears are bound to fester and grow." The Committee believes that such mechanisms must *further equip ordinary citizens*, not only organized pressure groups, to be able to be informed and be heard, and must further be connected to continuous *oversight by elected parliamentary representatives who are ultimately accountable to those citizens in all parts of Canada*.

Before elaborating more concretely on that fundamental proposition, it will be useful to summarize briefly a number of key messages which emerged from the hundreds of presentations which we listened to across the country and which should serve as touchstones for the next steps in advancing the Canadian trade policy development process.

What Canadians Told Us: Some Principal and Principled Public Messages

It is impossible to do full justice to the rich range of issues which were brought to the Committee's attention during several packed months of testimony. But our overall impression is that: (1) more Canadians are becoming more engaged across a broader range of trade and investment-related policies than ever before; (2) this trend is likely to be sustained; and (3) there is very little complacency even among those who are generally supportive of the liberalizing directions of recent years and the policies pushing for better market access on equitable terms. Certainly in agriculture and other commodities-based sectors, there was often a tone of urgency in the presentations. And in emerging areas, Meriel Bradford, Vice-President of

¹⁸ This is well documented by John Foster, who appeared before the Committee in Saskatoon on April 30 in Chapter 8 of the North-South Institute's *Canadian Development Report 1999: Civil Society and Global Change* (Ottawa, June 1999). That report points out that more than 12 million Canadians participate in some kind of civil society organization.

Tele globe, a true Canadian success story,¹⁹ suggested to the Committee that fast-changing business realities such as Internet commerce may necessitate a radical restructuring of how the international trade structures cope with an unwieldy mix of old and new issues: "Do we have the right boxes all lined up in the current WTO ... or do we want to rethink the global trading system? ... I don't know if we have our minds around that as a country. We certainly don't have our minds around it as international players." (*Evidence*, Meeting No. 112, April 13, 1999)

There were, to be sure, some deep divergences of view in approaching WTO negotiations in light of contrasting perceptions of the record of international trade and investment liberalization. Most witnesses with interests tied directly to trade focussed on the positive challenges to take advantage of opportunities for making progress through additional negotiations. Most NGO and individual witnesses were preoccupied by a non-commercial calculation of costs and benefits, and with ensuring that trade deals "do no (further) harm," as they saw it, in human and environmental terms. We are grateful to those critics who went beyond attacking the negative aspects of the trading regime as it now exists to offer thoughtful and constructive alternatives for policy consideration.

Notwithstanding these differences within Canadian society, which must continue to be exposed and tested through informed democratic debate, we have found important common themes which resonate throughout the testimony:

1. Getting international rules right matters but is no simple matter.

No one wants an anarchic power-based trading system. Canada would be one of the countries to suffer most from an absence of multilateral disciplines. However, who makes and enforces the rules, how, and for whose benefit, are critical

questions requiring satisfactory answers in their own right.

2. Process counts at all levels.

It is not only that expanded participation in decision-making is desirable on democratic grounds. Who is present, and in what capacity, has a direct effect on policy determination and outputs. Processes which are exclusionary will lack legitimacy and will probably not produce good sustainable policy results either. Processes which polarize rather than build social consensus frustrate attempts at reform, and add to collective action problems in dealing with the challenges of globalization.

3. Values are important.

Canadians do not want to see an amoral international economic system in which "justice is the interest of the stronger." In a phrase, they are looking for "commerce with conscience." They expect that responsible international trade and investment rules will at least not contradict international standards of social justice, environmental sustainability, and human rights to which Canada subscribes as part of its foreign and domestic policy commitments. Ideally, trade agreements should make a positive contribution to the realization of those other objectives, recognizing that improving the conditions of trade is only one instrument among many.

4. Promotion of trade interests must be in the public interest.

Export promotion and the expansion of commercial opportunities for Canadian businesses are valid goals, but not sufficient in themselves. While the private sector is the most directly engaged in trade and investment activities, trade and investment policies must be made on behalf of all Canadians and must take adequate account of consumer and other public-interest considerations.

¹⁹ The company announced a \$5 billion expansion in May 1999 which could transform it into the world's largest long-distance telephone network.

5. Policy choice matters.

In order for democratic deliberation to make a difference, there must be scope for policy alternatives internationally, nationally, and locally. While the international trade system needs to be governed according to certain fundamental principles to ensure order and fairness and avoid disruptive unilateralism, these should not seek to impose a “one-size-fits-all” ideological straitjacket on policymakers. This applies especially to areas such as culture in which diversity is of the essence.

6. Preparation matters.

There needs to be adequate time and resources devoted to determining Canadian trade objectives in consultation with all of the stakeholders, who in turn need the same in order to prepare themselves. Such preparation is, in effect, an application of the “precautionary principle” going into any important negotiations with other countries. It might also help avoid situations such as Canada’s so far unsuccessful retroactive attempt to restrict the meaning of ‘expropriation’ within the investment chapter of the North American Free Trade Agreement (NAFTA). Moreover, without a full and transparent preparation process, it will not be clear how the mandate given to Canadian negotiators serves the overall public interest.

7. Negotiations must be conducted in a fair and accountable manner.

Trade negotiation processes should not be decided by only a few of the most powerful players. This is especially the case in the WTO context in which agreements for the most part now constitute a “single undertaking” that will be binding on the majority of members representing smaller developing economies. Measures are needed to ensure that the rights and interests of all members are protected. As well, negotiating activities, while not necessarily conducted under the public eye, must be accountable to regular public scrutiny.

8. Transparency and predictability are critical to the functioning of the system.

Accountability is not possible unless the international trade system is an open one in terms of public access to information as well as commercial flows. Countries also need to be transparent about their trade and investment policies and activities. All participants need to know the rules clearly and have some confidence that they will be applied in a transparent and predictable way.

9. Trade impacts and results should be subject to regular review and evaluation.

It is not enough to reassure people that what is being negotiated in their name will be good for them. A healthy and humane trading environment is one which benefits society and minimizes any adjustment costs in the course of raising general economic welfare. Detailed knowledge is needed (e.g. of environmental or health effects) in order to inform better policy decisions, and this may require credible independent empirical studies which are made publicly available.

10. Effective enforcement of and coherence among international obligations will be essential.

The creation of a better global system of trade rules will break down if they cannot be implemented effectively or compliance is weak. Therefore the WTO structures must be up to the task. As well, it is crucial that the WTO’s mandate be clearly defined in relation to that of other international organizations; furthermore, that international trade obligations be coherent among themselves **and** with those in other areas (e.g. environment, human rights) so as to avoid costly overlaps, gaps, and potential conflicts.

Towards Instituting a Long-Term Public and Parliamentary Trade Oversight Process

Returning to the Committee’s earlier proposition: how can we ensure that these public messages will

be heeded within an open and democratic trade policy process that facilitates citizen–government dialogue, promotes shared learning – rather than an unproductive contest of propagandizing “public relations” versus purely adversarial polemic – and thereby builds public consensus and trust?

Many witnesses, including experienced practising international trade consultants such as Peter Clark, emphasized the need to operate in new ways. Drawing on the lessons from the Multilateral Agreement on Investment’s failure, Mr. Clark devoted much of his oral remarks on March 4 and a lengthy written brief, to overcoming the information, education and communications challenges which lie ahead. Indeed, this is an aspect of a wider debate about what is required to achieve true deliberative democracy in policy formation on complex subject matters.²⁰ He urged a proactive, candid strategy reaching out to many more Canadians than just the traditional stakeholder groups, including those who feel disenfranchised or aggrieved by prevailing trade trends. Clark added the important proviso that: “Effective and open consultations are a major undertaking – new and additional resources will be required to do it properly.” (*Submission*, March 4, 1999)

Stephen Clarkson of the University of Toronto also made this a major theme of his presentation, arguing that “the Canadian government should put most of its efforts coping with process problems into increasing the representational and transparency sides of its own national participation in the various negotiation processes.” Rather than the usual ideological official

defences, this could include “practical guides informing interested citizens or organizations how they find out about the international trade regime’s impact on their interests, and how they can represent these interests at the global and continental levels.” (*Submission*, Toronto, April, 27, 1999) As Nola–Kate Seymoar observed in Vancouver: “if you change who is at the table, you will change the kinds of decisions that are made. We need government at the table, we need the private sector at the table, and we need civil society at the table.” (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver)

The Committee has much sympathy with these perspectives, having undertaken its most extensive public consultations in over a decade around these issues, and including its own primer on the WTO system as part this Report. We were also encouraged by those witnesses who recognized the concomitant need for a much stronger role for Parliament in the oversight of policy development, negotiations, and implementation processes. As Peter Clark put it, Members of Parliament **are** the elected representatives of civil society. The submission of the World Federalists of Canada, which focussed on filling the “democratic deficit” in the global governance agenda, also affirmed that parliamentarians “are more legitimate voices for the common interest” than particular NGO representatives. (*Submission*, World Federalists of Canada, April 27, 1999) Nonetheless, we acknowledge that multiple forms of citizen representation are desirable, and that in a variety of international and multi-level governance settings – which have tended in the past to be the preserve of an exclusive well-connected elite – more needs to be done to

²⁰ See, for example, Arthur Lupia, *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* Cambridge University Press, Cambridge U.K., 1998.

²¹ Analysing recent international experiences, John Hay has observed that “the relationship of MPs to NGOs and other participants in Department of Foreign Affairs and International Trade (DFAIT)’s public consultation efforts remains ambiguous and weak. ... Parliament’s role in the transformation of policy-making has yet to emerge with clarity. NGOs tend to mention the Commons as an afterthought.” (“International Summits and Civil Society,” *Canadian Foreign Policy*, Fall 1998, p.102.)

forge new connections among government, civil society, and parliamentary processes.²¹

In this regard we note with interest the Australian model of Parliamentary scrutiny of treaties referred to in a detailed argument submitted by Stephen Kerr (*Submission*, April 27, 1999), and the efforts underway within the European Union context²² that were cited by Pierre Sauvé and Ambassador Jean-Pierre Juneau (*Evidence*, Meeting Nos. 135 and 136, May 12 and 13, 1999).

In a sense, what is needed is a sort of domestic equivalent to what the WTO's Trade Policy Review Mechanism (TPRM) could become at the international level were it to function in an expanded and more publicly circulated, robust and critical way, as was recommended by some witnesses.²³ It is striking that although the WTO's "trade policy review" for Canada was released in December 1998²⁴, only one (Professor Eugene Beaulieu in Calgary) of the hundreds of witnesses before the Committee bothered to comment on it.

Of course, more than just posthumous input is needed; there must be opportunities for enlarged public engagement at all stages of the policy process from conception to execution. What the

Centre for Foreign Policy Development is beginning to do on the foreign affairs and international security policy side needs to be developed for international trade and investment policies. With regard to actual negotiations, while the Committee has reservations about Dr. Seymoar's suggestion that non-governmental representatives could be included on a trial basis on future Canadian negotiating teams, we are inclined to agree with Dr. Asit Sarkar of the University of Saskatchewan that it could be useful "to establish a formal consultative process with the non-governmental stakeholders so that the negotiating team can obtain quick feedback during the various stages of the negotiation process." (*Evidence*, Meeting No. 127, April 30, 1999, Saskatoon)

For all of these reasons, the Committee believes that reforming the trade advisory system deserves consideration in order to sustain a more timely and constructive dialogue with Canadians around issues in trade and investment negotiations. Furthermore, it is essential in our view that this enhancement of the Government's consultative system be formally connected to an enhanced Parliamentary oversight role before, during, and following the negotiation of any future international trade and investment agreements.

²² The EU Commission's second annual Report to the European Parliament on "EU Activities with the World Trade Organization" (Brussels, 1999) declares that "WTO members have a primary responsibility to develop, at the domestic level, procedures for consultation on trade policy-making. The Commission is convinced that organizations of civil-society are key stakeholders in the process of trade policy formulation. It is for this reason that the Commission has initiated a broad process of consultations with organizations of civil-society on issues relating to the preparation of a new WTO Round. This process is intended to complement and not substitute the process of consultations and cooperation among the Community institutions. In this context, the Commission attaches the outmost (sic) priority to consultations with the European Parliament on issues related to the WTO's work." (p.5)

²³ See also the proposals for reform in Donald Keesing, *Improving Trade Policy Reviews in the World Trade Organization*, (Policy Analyses in International Economics No. 52, Institute for International Economics, Washington D.C., April 1998), which advances the notion of creating "national committees in key member countries, with the express purpose of identifying opinion leaders and others at who dissemination should be focused" (p. 52). The functioning of the TPRM is scheduled for review by WTO members in 2000.

²⁴ "WTO releases report on Canada's international trade policies and practices". Department of Foreign Affairs and International Trade", Press Release No. 295, December 17, 1998.

Recommendation 1

The Government should review the existing trade advisory system in order to broaden its representation of societal interests, and to support the objectives of:

- conducting regular consultations with the broadest possible range of stakeholders within Canada in collaboration with all relevant Departments involved in policy formulation at the federal level; and
- initiating independent studies of significant matters relating to international trade and investment agreements; and
- providing timely information and feedback to Parliamentarians and citizens during all pre-negotiation, negotiation, implementation and review phases of international trade and investment agreements.

Recommendation 2

Parliament's institutions, and in particular this Committee, must also be able to examine fully all future trade and investment negotiations, most importantly at the WTO level, prior to Canada implementing into domestic law any binding agreements resulting from such international trade and investment negotiations.



Part One

Canadian Interests in Building a Better Global Trade Regime

- Chapter 1: Towards a WTO for the New Millennium
- Chapter 2: Negotiating at the WTO: Process and Priorities for the Next Round
- Chapter 3: Implementation of the WTO Agreements and Dispute Settlement
- Appendix 3A: Structure of WTO Agreements and Scope of Obligations
- Appendix 3B: Description and Use of the Dispute Settlement Procedure

TOWARDS A WTO FOR THE NEW MILLENNIUM

“What Canadians are Saying”

The WTO must also be changed from what it is today – a nameless, faceless, non-democratic and inaccessible body which sets important rules for the global economy in the absence of genuine participation by ‘civil society’, including the labour movement.

Robert White and Andrew Jackson, Canadian Labour Congress
Tuesday, April 27, 1999 Toronto

This hearing comes too late and we are debating the wrong question. Here we sit discussing the agenda of the World Trade Organization ...when what we should be debating is the World Trade Organization itself. We are debating the locks for a stable from which the prize stallion has long since been stolen and sold... The founding of the World Trade Organization has been totally undemocratic, though through its negotiation, its adoption and its implementation, my MP never raised the subject. Had anyone ever raised it with him I wonder?

Ann Emmett
Tuesday, April 27, 1999 Toronto

...the WTO has been one of the major success stories of the post-war world. This success poses two dangers for the WTO. One is the tendency to overload the institution. Because of its success and the quasi-judicial nature of its dispute resolution system, there is a tendency to push more and more issues into the WTO. It is ill-equipped to cope with some of them, and the whole issue of investment and rules for investment is an area in which the WTO should tread with extreme care. There is also a tendency to think that because of the WTO's past success, more of the same is the right answer to new issues. The WTO is designed to address a specific agenda.

David Runnalls, International Institute for Sustainable Development
Thursday, March 4, 1999

It is not easy to get an organization that has been invented and designed essentially for trade purposes to take into account other types of problems...The objective is not to turn the WTO into an organization with a social, cultural environmental and trade mandate, but rather to promote the establishment of linkages and rules with respect to relationships among trade, environmental, labour and cultural issues. It appears that that is the avenue that is being followed right now. Efforts will be made to develop closer institutional linkages to foster, for example, greater consideration of environmental issues at the WTO, without making the WTO into a true environmental organization.

Professor Ivan Bernier, Faculty of Law, Laval University
Monday, March 22, 1999 Québec City

Canadians made a major contribution to the institutional agenda of the Uruguay Round, including the proposal to create the WTO. We should do so again. Delegates to the proposed [WTO] Executive Committee would be Ministers; their mandate would be to ensure that the WTO meets its broad objectives, which would require them to have an overview of both WTO operations and of developments in the trading system. Meetings of the Committee would be public, and might well be a useful vehicles for opening up the organization, for creating a set of meetings whose content and import might be more readily understandable by the public. I have proposed a membership formula based on the Trade Policy Review Mechanism. It would see the 4 largest trading entities, of which Canada is one, automatically being on the Executive Committee. The next 16 Members would be on for two years during every four year cycle. The rest of the WTO membership would choose 8 representatives from among themselves to be on the Committee during each 2 year term.

Professor Robert Wolfe, School of Policy Studies, Queen's University
Tuesday, March 2, 1999

The global trade regime has implications far beyond inter-corporate dealings and extend to the everyday activities of Canadians...As we move forward, we need to position the WTO as a fair trade mechanism that serves the needs of countries, but at the same time does not undermine or negate the authority of our national government, or other governments or agencies to fulfil their mandates, obligations and responsibilities to Canadians.

Michael Janigan and Andrew Reddick, Public Interest Advocacy Centre (PIAC)
Tuesday, March 16, 1999

A more substantial institutionalization of the global regime should also ensure the representation in Geneva of provincial interests since the WTO's normative scope affects provincial almost as much as federal jurisdiction.

Professor Stephen Clarkson, Department of Political Science, University of Toronto
Tuesday, April 27, 1999 Toronto

The Canadian government should at least take a look at the opinion given by the London Privy Council, which suggested that the door should be opened to allow, for federal systems, the creation of a WTO forum for states that are part of federations, so that their point of view can be heard and so that commitments made by the federations can be adjusted.

Stéphane Rémillard
Monday, March 22, 1999 Québec City

When it comes to the creation of international institutions to administer these agreements, let's get the horse back in front of the cart. Let's call a halt to measures that increase the power of these institutions until we've made them democratically accountable.

Hugh MacKenzie and Lawrence McBreaty, United Steelworkers of America
Tuesday, April 27, 1999 Toronto

Towards a WTO for the New Millennium

In theory, the WTO structure is more democratic than that of the World Bank or the IMF in as much as each country has one vote. In practice, though, there are many limitations to the effective participation of poor nations. The 'negative consensus' procedure at the WTO works against the participation of less developed countries – if they are unable to attend a meeting, they are assumed to be in agreement. Since several WTO meetings may take place simultaneously, it is simply impossible for poor countries to have delegates at each one. Poor countries also have difficulty making effective use of the dispute settlement procedure, due to high legal costs and possible negative consequences of a cross-retaliation that is allowed by the WTO. Much needs to be done to make the WTO a fully democratic institution fully representative of the international community.

Betty Plewes, Canadian Council for International Cooperation
Submission, March 18, 1999

What kind of world trade organization is needed to meet the challenges of the next century? What should be the scope and the limits of its mandate and powers? What should be the principles and norms that guide its decisions, especially as it is increasingly called upon to act as, in effect, a world court for the settlement of trade disputes? What kind of governance structures does this WTO need, both to cope with a workload that grows heavier and more complex by the day, and to answer the charges of a chorus of critics that it is becoming another big controlling supra-national bureaucracy, lacking in democratic accountability and beholden to a dominant group of big states and big business elites?

These are not easy questions to try to answer, nor are they merely academic debating points. The point of departure must be the current WTO which we described in the "Citizens' Guide," and which would surely have to be invented in some form if it did not already exist. Virtually all of the witnesses before the Committee said that a rules-based framework for international trade was necessary, even if they decried how the present one operated. And virtually everyone implied that it would be preferable for such a framework to be truly multilateral (ideally, universal), so that its rules governing the expanding range of transactions in the global economy would have

greater legitimacy and be respectful of the interests and values of people in all countries participating in the trading regime. In short, we need the WTO, and if we want to reform it, we need to think seriously about which "constitutional" and governance reforms should be a priority for consideration at the Seattle Conference and beyond, and how these might be advanced among the 134-plus members of the WTO (Estonia is slated to become the 135th member soon), which could by then include China.

It is useful to recall that Canada played a role of middle-power leadership in the construction of the post-war trading system, and again in the transformation of the "provisional" GATT from a trade agreement into the permanent structure of the WTO – a membership organization forged on legal principles and endowed with a much stronger dispute settlement mechanism (in that respect similar to the failed ITO), though in other respects remaining quite minimal institutionally. As outlined by Sylvia Ostry in her written paper, Canada was active in the negotiating group on the Functioning of the GATT System (FOGS) established at the launch of the Uruguay Round. However, it was not until 1990 that Canada proposed a WTO which then attracted the interest of the European Community as a way of

constraining U.S. unilateralism. U.S. reservations on sovereignty grounds were only overcome in the final deal-making at the end of 1993, allowing the WTO to be formally established in 1995.¹

With the benefit of the first five years of WTO experience, could Canada take another lead role in tackling the issues of institutional review and reform which have already been put forward for the Seattle agenda? The U.S. Government press release announcing the site and dates of the third WTO Ministerial Conference cited President Clinton's call for a "new, accelerated negotiating Round" that would include, as a major dimension, "institutional reform to make the WTO more transparent, accessible, and responsive to citizens."² Robert Wolfe, while cautioning the Committee against "the trend to seeing the WTO as a master agreement that can regulate all domains of life,"³ has also argued that the WTO needs visionary leadership to be able "to continue the process of including new domains and areas of the world economy within a single multilateral governance structure." Eugene Beaulieu explicitly endorsed Wolfe's positive challenge that "Canadian leadership is most important in the realm of ideas about the rules and principles of the trading system, and our strengths can be used to bring other members of the WTO together."⁴ (*Evidence*, Meeting No. 125, April 29, 1999, Calgary) The submission of the International Institute for Sustainable Development (IISD) argued that, having been instrumental in the transition from the GATT to the WTO, "Canada bears special responsibility for the long-term

viability of the organization." (*Evidence*, Meeting No. 119, April 26, 1999, Winnipeg)

But how much responsibility for the management of global economic affairs should be given to the WTO? And how much does it in fact need fixing? The submission by the Alliance of Manufacturers & Exporters Canada cautioned that "five years of experience is too short a period of time to draw firm conclusions and make any final judgments on many areas. Canada should resist the temptation to engage in 'fixing' parts of the WTO, at least until we are sure that fixing is really needed." (*Submission*, Alliance of Manufacturers & Exporters Canada, April 30, 1999) Of course, the Committee also heard from many critical voices who are convinced that sweeping and fundamental changes must be made to the system. They were very clear about what they did not like, but less so about how, in practical terms, today's WTO might be radically transformed into the alternative model they envisage, since, however devoutly it might be wished, this would have to be negotiated internationally among the current and prospective members of the WTO to have any chance of succeeding.

In between, a number of witnesses, while committed to the continued effectiveness of the present WTO, agreed that significant reforms should be undertaken as soon as possible. In Michael Hart's view, the WTO marks a "good but insufficient start." (*Submission*, Michael Hart, April 26, 1999) The IISD, in calling for a strong promotion of accountability and sustainability objectives, observed that: "To preserve its hard won effectiveness, an organization such as the

1 Sylvia Ostry, "Future of the WTO", Paper presented in Toronto to the Brookings Trade Policy Forum, Washington D.C., 15-16 April 1999 and submitted to the Committee, April 27. See also Gilbert Winham, "The World Trade Organization: Institution-Building in the Multilateral Trade System," *World Economy*, May 1998, pp. 349-68; Raymond Vernon, "The World Trade Organization: A New Stage in International Trade and Development," *Harvard International Law Review*, Spring 1995, pp. 329-40.

2 "1999 World Trade Organization Ministerial to be Held in Seattle", Press Release, Office of the United States Trade Representative, February 1, 1999 Washington, D.C.

3 *Submission*, Canada's Role at the WTO and in the Millenium Round of Negotiations, Robert Wolfe, March 2, 1999.

4 Robert Wolfe and John M. Curtis, "Providing Leadership for the Trade Regime", in Fen Hampson and Maureen Molot, eds., *Canada Among Nations 1998: Leadership and Dialogue*, Oxford University Press, Toronto, 1998, pp. 138-39.

The WTO is not – and has no intention of becoming – a supra-national body with extra-territorial powers. It is not a world policeman that can force compliance upon unwilling governments. WTO rules are freely negotiated by sovereign governments within a consensus-based system.

– former WTO Director General
Renato Ruggiero⁵

WTO must continue to evolve institutionally and remain focussed on matters it is capable of handling.” (*Evidence*, Meeting No. 119, April 26, 1999, Winnipeg) Dr. Ostry’s analysis identified an array of democratic, developmental, capacity, and coherence “deficits” to be contended with, concluding that: “If the WTO’s **structural** weaknesses are not tackled, the gap between its mandate and capabilities will widen and jeopardize the future of the rules-based system and the stability of the entire international economic system.” (*Submission*, Dr. Sylvia Ostry, April 27, 1999) Professors Ivan Bernier and Gilbert Winham also pointed out some structural flaws and challenges (notably in the area of dispute settlement addressed in Chapter 3) which Canada should work to rectify in forthcoming negotiations. (*Evidence*, Meeting Nos. 104 and 107, March 22 and 24, 1999, Québec City and Halifax) Finally, Jeffrey Schott, a prominent U.S. authority on the trade system, told the Committee that the WTO has some “serious birth defects, particularly regarding the management structure of the organization, linkages with other international institutions, and the transparency of WTO operations. ... New negotiations need to correct these problems and other notable omissions and ambiguities in the WTO accords.” (*Submission*, Jeffrey Schott, May 12, 1999)

In the next parts of this Chapter we consider further the improvements that Canada should seek to advance at Seattle in regard to, first, the overall character of the WTO regime – its foundational mandate and principles – and, second, the governance structures of the organization, with the aim of progressing towards a more open and

democratically accountable WTO that is better able to serve the interests of Canadians in multilateral rules-based trade.

Improving the WTO: “Constitutional” Mandate and Norms

How powerful is the WTO in fact, and how far should it go in constraining the sovereignty of Member States? Opinions among the witnesses differed on these points. In the Committee’s first roundtable, Lawrence Herman made the expansive claim that “the WTO agreement has become the world’s primary integrating institution that establishes and administers rules of law unlike anything we have known in human history,” going on from that to argue that “it is in Canada’s interests to ensure the primacy of law internationally, to enhance the role of the WTO as the central organizing institution in human affairs today.” (*Evidence*, Meeting No. 93, March 2, 1999) Paradoxically, this is precisely what is feared by many of the WTO’s critics who claim it is following the wrong path by bestowing “rights” that corporations should not have while neglecting human rights, by overturning regulations passed by democratic legislatures, and by serving globalization processes that accelerate damage from unsustainable modes of production, consumption, and exchange.⁵

The Common Front on the WTO’s “Guide for Environmentalists” presented to the Committee by Steven Shrybman, referring to other remarks by Ruggiero, suggests that the WTO is acting as a de facto “economic constitution for the planet,” and is driven by business to the exclusion of other societal interests. Yet Professor Errol Mendes,

⁵ “The Coming Challenge: Global Sustainable Development for the 21st Century”, Address to the WTO High-Level Symposium on Trade and Environment”, March 17, 1998, Geneva.

who strongly advocated integrating those other interests into the GATT/WTO regime, argued that it remains "a relatively weak institution ... still fundamentally based on contracts between nations who decide to give each other most-favoured-nation status. It is only because it has wrapped around these contractual relationships an institutional body called the World Trade Organization that it is now attracting a lot of attention in terms of labour standards, the environment, human rights, etc." The diagnosis of the WTO is not self-evident, he warned, and simple prescriptions will not work. (*Evidence*, Meeting No. 102, March 18, 1999)

The Committee agrees that there are some complex issues of a "constitutional" nature which must be addressed. It may have been premature when, in September 1986, Canada's then Secretary of State for External Affairs declared at the launch of the Uruguay Round that "GATT rules are as important to us as the rules of our Constitution." Thirteen years later, with deeper integration pushing the case for global norms governing acceptable market conduct, and Canadian domestic laws being challenged in high-profile WTO panel decisions, such a claim no longer seems exaggerated. The strengthened legal framework of the WTO was described by Steven Clarkson as part of a recent generation of international economic agreements amounting to an "external constitution" that, like the internal constitution, sets limits – in his view sometimes unjustified and unwise ones – on what governments can do. (*Evidence*, Meeting No. 122, April 27, 1999, Toronto). Sylvia Ostry's paper acknowledges frankly that: "The constitutional character of the WTO raises a number of problems. ... In choosing to greatly strengthen the dispute settlement system the negotiators were right: there was no acceptable alternative. But not many understood that they had established a constitutional regime with profound implications

for the underlying international social compact. Or that the establishment of an international constitution would elicit increasingly frequent demands for a 'democratic' WTO."⁶

Constructive action is clearly indicated in order to address such concerns at the constitutional level of the WTO, building on the still valid principles carried over from the GATT regime of non-discrimination in progressively liberalizing trade for the benefit of all parties. The latter were described in our "Guide" and so will not be repeated here. Looking ahead to a WTO that is adapted to the demands of a new millennium, the Committee believes that the following additional constitutional principles ought to be the subject of explicit review by WTO Members.

'Sovereignty' and 'Subsidiarity'

In the wake of the WTO's creation and the new realities of global commerce, it has been argued that states have a compelling interest in "pooling their sovereignty," since remaining outside, or worse, withdrawing from the "increasingly close-knit world trading 'club' ... no longer remains a viable option."⁷ Certainly the desire of virtually all countries to be inside the "club" seems to confirm that. And while many smaller countries may be disadvantaged in the global system, shared sovereignty may be the only way for them to restrain the unilateralist impulses of the strongest countries by entering into coalitions to achieve cooperative solutions based on commonly agreed rules. Moreover, with respect to the dilemmas of democratic control, Michael Hart has suggested that a suitably enhanced and reformed WTO regime may turn out to be the most feasible way of "recapturing political authority that has been lost as a result of the silent integration flowing from the forces of globalization." (*Submission*, Michael Hart, April 26, 1999)

⁶ Ostry, "Future of the WTO", pp. 10–11.

⁷ Susan Hainsworth, "Sovereignty, Economic Integration, and the World Trade Organization," *Osgoode Hall Law Journal*, Fall 1995, pp. 620–21; see also Kent Jones, "Who's Afraid of the WTO?" *Challenge*, January/February 1998.

As yet, however, it is national governments which negotiate, and must then implement and abide by, WTO rules and disciplines. A number of witnesses argued that these sovereign responsibilities demand prudence and caution before surrendering too much, too soon, to the WTO. For example, Ann Weston of the North–South Institute cited Dani Rodrik’s observation that: “It is not realistic to expect that national development models will converge in a single model of good economic behaviour. ... Policy-makers should avoid becoming knee-jerk globalizers.” (*Submission*, North–South Institute, March 18, 1999) International development NGOs which appeared before the Committee expressed concerns about the WTO being used to undermine the rights of governments to use local procurement practices. Similar concerns were expressed by local and aboriginal government representatives testifying in British Columbia. More generally, the fear was of rushing into rules designed to make the world easier and safer for transnational commercial and capital flows without first ensuring that each countries’ communities (including those of indigenous peoples) retain sufficient rights to pursue their own paths to sustainable economic and social development.

There is no simple or fixed dividing line in these matters. Nonetheless, the message is that preserving considerable scope for subsidiary national and subnational policy flexibility seems wise. The WTO may well need to address new issues in response to globalization, but before doing so the scope and limits of its intervention should be clearly defined and probably should be confined to general rules applying to trade-related areas where there is strong evidence of externalities and transnational spillover effects. The WTO will have its hands full trying to set and enforce such general standards without

encroaching further into the law-making function of governments.

‘Universality’

While witnesses generally were wary of the WTO trying to become all things to all people – taking the ‘t’ out of WTO, as Ambassador Weekes put it – they did recognize the value of the WTO becoming an increasingly global institution in several senses. First, those witnesses who commented on accession issues, particularly in regard to the pending case of China’s admission following years of protracted negotiations, supported the case for an inclusive approach. In other words, there is more to be gained from dealing with country-specific issues with the benefit of the WTO’s mechanisms than in excluding countries until they have met some idealized standard to which, truth be told, many existing WTO members would not measure up. As one recent study of the see-saw negotiations with China put it: “Over time, the integrity of the world trading system will be difficult to maintain if one of the largest trading countries in the world avoids complying with WTO disciplines.”⁸ The IISD brief made a clear argument that it is in Canada’s interests to seek a *sui generis* accession agreement that permits China to join.

Of course, countries seeking WTO membership must commit themselves to abide by the principles of the organization, and this brings in a second consideration in regard to the universal application of norms. Some witnesses argued that membership should never be unconditional, and that the WTO should move as a responsible global body to uphold other universal international legal standards, notably, for example, in the realm of UN human rights obligations. This is a complex area which the Committee explores further in Part III. We flag it at this point as an item which needs to be considered in reviewing the WTO’s constitutional mandate.

⁸ Nicholas Hardy, *China’s WTO Membership*, Policy Brief # 47, Brookings Institution, Washington D.C., April 1999, p. 7.

'Transparency' and 'Accessibility'

In his statement to the Committee on February 9, Minister Marchi declared that "we need to throw open the windows of the WTO process."

Witnesses generally wholeheartedly agreed.

Canada, along with the U.S. and the EU, have tabled proposals in this regard, mostly directed at more rapid derestriction of documents and timely access to information on dispute settlement processes.⁹ In a narrow sense, 'transparency' is already a basic principle of the WTO agreements, many of which include notification requirements, and of accession negotiations. Countries are supposed to "come clean" about all of their policies and regulations affecting trade, so that these are transparent to all participants in the trading system, and so that conformity with the obligations of WTO membership can be fully assessed. Several witnesses expressed reservations about going too far beyond that. For example, Lawrence Herman cautioned that more transparency should not mean complete accessibility of WTO mechanisms to all comers: "I do not believe it would further the interests of Canada or enhance the rule of law internationally to have interest groups or private persons taking part in WTO dispute settlement processes." (*Evidence*, Meeting No. 93, March 2, 1999)

Sylvia Ostry worried that open participation could result in transforming such mechanisms, which are already overburdened, into purely litigious and adversarial procedures of dubious merit from a democratic governance standpoint.

Many witnesses, however, clearly want the windows thrown open much wider. As Michael Hart correctly ascertains: "Transparency will involve consultations with many more actors, a willingness to make the decision-making and dispute settlement processes more open, and a

commitment to new levels of accountability." (*Submission*, Michael Hart, April 26, 1999)

Indeed, an IISD study based on research by a WTO staff member confirms that: "Secrecy is not useful where negotiations involve issues of public policy, such as health and safety standards and environmental regulation; these are matters which policy debates must be opened to, not protected from, public involvement." That study's first concluding recommendation was that: "WTO members seek to achieve application of their transparency obligations – most of which apply only to other members – to their own citizens."¹⁰ The submission of the Canadian Environmental Law Association (CELA) strongly advocated extending Canadian initiatives on transparency to negotiation and dispute resolution processes, observing that secrecy would not be tolerated in corresponding Canadian institutions and that government officials do in fact consult industry interests – an unacceptable and imbalanced situation "since the WTO trade rules actually constrain national governments from passing laws to protect the public." (*Submission*, Canada Environment Law Association, April 28, 1999) In regard to future agreements, a number of witnesses therefore urged that there be full disclosure of draft negotiating texts with these made available for public review.

'Contestability' and 'Sustainability'

The first of these is another increasingly key term that has both a narrow technical and a potentially broader public meaning. As Michael Hart's paper points out, the approach to 'contestability' which has been developed in the economics literature aims at reducing anti-competitive practices which prevent markets from achieving economically and socially efficient outcomes of which they would otherwise be capable. Recent work on moving towards globally contestable markets emphasizes

⁹ "Transparency in WTO Work". Revised Proposals by the United States and Canada submitted to the General Council, Geneva, 14 October 1998. A subsequent 27 January U.S. position paper on "Preparations for the 1999 Ministerial Conference" states that: "Urgent action in this area [of transparency and openness] is needed to restore credibility to the WTO dispute settlement process."

¹⁰ Alice Enders, "Openness and the WTO," International Institute for Sustainable Development, Winnipeg, n.d., p. 3 and 31–32 of Internet copy available at <http://iisd.ca/trade/wto>.

that a comprehensive range of policies governing both the public and private sectors must be looked at. According to Hart: "Governments need to start thinking about how to make the transition from a code of government-to-government obligations to a code governing private sector behaviour in the global market, with appropriate institutions and procedures for their enforcement. ... Additionally, an international regime governing the contestability of markets should recognize that a global economy needs more than rules to safeguard market outcomes; it also needs rules to safeguard that such outcomes respect broader values reflecting those of a civil society." (*Submission*, Michael Hart, April 26, 1999)

Many witnesses agreed that international markets need a "civilizing" and environmentally sustainable regulatory framework in order to "deliver the goods" and avoid doing harm, as Marc Lee, a research economist with the Canadian Centre for Policy Alternatives put it to the Committee on the panel with Mr. Hart. The IISD in Winnipeg and John Kirton and Julie Soloway in Toronto were among those seeking to entrench sustainability as a constitutional principle of the WTO in order to provide a strong normative interpretive direction to the entire trading regime. Many environmental and labour groups, and other NGO witnesses would also like to shift the balance of WTO negotiations away from further disciplines on governments' behaviour – arguing in favour of more economic pluralism in public policies – towards instead, consideration of fairness and sustainability issues involving stronger disciplines on private-market actors. Moreover, in this view, socially exploitative and environmentally destructive practices are also *economic* distortions which impair the benefits to be obtained from a genuinely liberal multilateral trading system. Hence, while there are many disagreements, especially with business and industry groups, about how far to take this

argument, it seems clear that the WTO institutions will have come to terms with these concepts.

'Coherence'

Finally, a word about a concept to which the Committee will come back in the last chapter. Several witnesses, notably Ivan Bernier, pointed to problems of sorting out congruence even among the multiple agreements of the WTO itself. Beyond that, Sylvia Ostry's paper, as well as submissions from the North-South Institute, the CCIC and others, all pointed to the need for much greater policy coherence, if not actually convergence, among the international institutions that might be held jointly responsible for global economic governance. In other words, the more ambitious the WTO's mandate becomes, the less it will be able to better define and fulfill its mandate in isolation from the other parts of the multilateral system. Improving the WTO must take place within the context of efforts to construct an integrated approach to crafting overarching rules that are appropriate to the global economy of the next century. As yet, only minor progress has been made in this regard. Former WTO Director General Renato Ruggiero has already suggested that this be a priority item on the millennium agenda of the United Nations.

A Next Step

The consideration by WTO members of a "Millennium Round" at the Seattle Conference later this year should at the same time be an opportunity to launch a serious collective reflection on the constitutional direction of the organization. Such a high-level review should aim to redress critical deficiencies in the areas identified above, and in several others to which we turn in the next section. The Committee believes that Canada is well-positioned to exercise creative diplomacy towards achieving this result.

Recommendation 3

That, at the Seattle Ministerial Conference, Canada promote the establishment of a high-level group on the future of the WTO with a mandate to propose improvements to the WTO system at the next ministerial conference. As a first priority, the following constitutional elements should be reviewed: 'sovereignty' and 'subsidiarity' in regard to the proper scope and limits of future WTO intervention; 'universality' of membership obligations; institutional 'transparency' and 'accessibility'; application of 'contestability' and 'sustainability' principles to the trading system; 'coherence' among all parts of the WTO system and with the mandates of other international organizations.

Improving the WTO: Democratic Governance and Accountability Structures

Jeffrey Schott has written that "the enhanced institutional status of the WTO has provoked numerous concerns from labor, environmental, and other non-governmental organizations (NGOs) regarding the new authorities vested in this supranational body. Contrary to the opinions of its highly vocal critics, however, the WTO has not created a bureaucratic monster, and its international civil servants have not usurped the national sovereignty of member governments."¹¹ The latter contention would be contested by some of our witnesses, notably environmental and public-health groups worried about free-trade biases in WTO panel decisions and corporate challenges to more stringent health and safety regulations. However, it is true that the WTO is not a large organization in terms of staff and budget, and the fact that it is seriously overburdened needs to be addressed when contemplating any major institutional reform program for the organization. As Schott told the Committee: "Resource constraints already hamper WTO activities. The Uruguay Round accords greatly expanded the responsibilities of the WTO but member countries have not provided adequate resources to service new trade negotiations, administer the burgeoning caseload of disputes, conduct trade policy reviews and complex accession negotiations, and collaborate with the World Bank and IMF regarding trade reforms of

countries in financial crisis." (*Submission*, Jeffrey Schott, May 12, 1999)

Other witnesses also commented on the need for the WTO to address capacity-building challenges, particularly in regard to the participation of the majority of developing countries, in the context of efforts to overcome the organization's democratic governance "deficit." Canada's Ambassador to the WTO John Weekes, who chaired the WTO's General Council during 1998, noted that with some 35 standing bodies meeting within the WTO system, staffing them is a challenge even for a country like Canada. (*Evidence*, Meeting No. 134, May 11, 1999) Since in his view developing-country concerns will permeate the issues in any new negotiating round, additional Canadian technical support for at least the smaller low-income countries would seem to be indicated. Richard Blackhurst, the GATT/WTO Secretariat's director of economic research and analysis from 1985-97, points out that:

Two-thirds of the least-developed countries already in the WTO have no representation in Geneva ... What makes this such a serious problem is the fact that the WTO is a 'member driven' organization, in which the delegates play a much more active role in the day-to-day activities than is true of other international economic organization... Unless a major effort to assist these countries is launched very soon, it borders on pure fantasy to believe they will be in a position to participate meaningfully in the WTO negotiations on

¹¹ Schott, "The World Trade Organization: Progress to Date and the Road Ahead" (1998), p. 4.

(at least) agriculture and services that must begin before the year 2000... the demands for technical assistance will soon exceed by a very wide margin the ability of the WTO Secretariat to deliver.¹²

The Committee urges the Government to consider practical proposals, such as those made by Ann Weston of the North–South Institute and Sylvia Ostry, to build up the capacity of the WTO’s governance and negotiating structures in the interests of effective functioning that avoids marginalizing the poorest countries within them. We will return to this when considering implementation issues in Chapter 3.

Effective Representation, Societal Interests, and Democratic Oversight by Parliaments

Beyond the technical capacity issues, there are some serious *political* concerns that must be addressed concerning the WTO’s capacity to act in a more democratically accountable manner. An initial governance problem is that the WTO, a diffuse membership organization which meets in plenary ministerial conference only every two years, lacks a properly constituted steering or “executive” body that can be held accountable for setting overall directions, delivering effective management, and taking decisive action when needed. The recent gridlock among WTO members over the choice of a successor to Renato Ruggiero as Director General may serve a purpose if it draws attention to this deeper leadership gap. There is no equivalent to the UN’s Security Council or the IMF/World Bank’s governing boards. Instead, the structural vacuum has been filled *de facto* by the “Quad” countries – to which Canada belongs, along with the United States, European Union, and Japan. Some analysts even refer to it as functioning as an “informal steering

committee” for the WTO system. Its pronouncements, as at the most recent meeting of Quad trade ministers in Tokyo in mid–May which supported the launch of a comprehensive Millennium Round in Seattle and favoured quick Chinese accession, are sometimes taken as virtual executive decisions. Yet that leaves well over 100 countries out of the process! Robert Wolfe, Sylvia Ostry, and Jeffrey Schott in particular advocated the creation of a formal WTO “executive committee” to help solve the problem. In the Committee’s view, such an executive body would have to develop a rotational and regionally representative structure in order to be able to act credibly on behalf of all WTO members and not just a privileged few.

A second democratic governance deficit that needs attention is the WTO’s relations with non–governmental actors and the citizens of the societies which its decisions increasingly affect. Given its institutionally conservative and minimalist GATT heritage, and a continuing reluctance on the part of some member countries, the WTO has been slow to open up to NGO and “civil society” participation. But like other intergovernmental organizations such as the United Nations and the World Bank, it now has a range of initiatives in place to “enhance dialogue with civil society,” *inter alia*: regular briefings for NGOs; a specific section on the WTO Website; circulation of NGO position papers to WTO members; and for the past several years, annual symposia on trade and development/trade and environment issues to which hundreds of NGOs from all over the world have been invited. Nevertheless, many NGOs still question the extent to which they have achieved significant “high–level” input, and remain frustrated by a lack of progress to date on further public transparency, accessibility and accountability measures.¹³ Many of our witnesses advocated

¹² Blackhurst, “The WTO and the Global Economy”, *World Economy*, 1997, p. 14. For a more recent insider assessment, see Constantine Michalopoulos, “The Developing Countries in the WTO,” *World Economy*, January 1999, pp. 117–43.

¹³ See the “Joint Civil Society Statement on the WTO High–Level Symposia on Trade and Environment and Trade and Development” which was appended to the March 18 brief from the Canadian Council for International Cooperation.

strengthening participation through institutional improvements such as, to use the World Federalists of Canada list:

- *broader and faster access to working documents;*
- *opening dispute settlement and appellate body proceedings to public observation;*
- *mandatory consideration of amicus briefs; and,*
- *participation by NGOs in WTO meetings and development of a better consultative process between the WTO, NGOs, member governments, and businesses. (Submission, World Federalists of Canada, April 27, 1999)*

With regard to the latter point, the International Centre for Human Rights and Democratic Development made a detailed argument in its submission that the WTO could build on the historical experience of the Havana Conference and the provisions of its own founding *Act* to proceed to institutionalize NGO participation in ways that would assist international trade policy and law: “by providing expert information, serving as a sounding board for possible compromises, injecting new ideas into a substantive debate, securing public support necessary for parliamentary approval, and serving as monitors to enforce governmental commitments.”¹⁴ The ICHRDD therefore recommended that: “civil–society groups should be permitted the opportunity to present their views on a regular basis to WTO committees and the WTO should make provisions to ensure that NGOs have access to proceedings and official delegates during Ministerial and other high–level meetings.” (*Submission*, International Centre for Human Rights and Democratic Development, March 24, 1999)

However, growing NGO involvement can create its own complications, such as governments having “to judge how representative NGOs are of special interests and broader public opinion.”¹⁵ Dr. Nola–Kate Seymoar suggested to the Committee that NGOs themselves tend to know who the most credible spokespersons are. She was also one of several witnesses who urged adequate channels for citizens’ interests to be represented throughout negotiation processes and involving all government levels, including provincial, local, and aboriginal. (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver) Within Canada, resolving the representation problem at the national level should benefit from a sufficiently well–constructed public trade advisory process, as put forward in the Committee’s first recommendation. At the WTO level, serious thought would have to be given to how to accredit representatives other than nation–states, possibly granting them certain types of status in various WTO processes, taking care to give voice to developing country civil–society organizations, not just the better–financed Northern NGOs, some with agendas which may be highly suspect in the eyes of most Southern governments.

Moreover, and most importantly, if the WTO needs better executive institutions and societal linkages, where do the crucial mediating and deliberative institutions of representative parliamentary government fit into the reform design?

A recent comprehensive study of accountability issues related to the WTO laments that no arrangement of “democratic checks and balances” has yet evolved, and the role of national parliaments deserves special attention since with few exceptions these play “only a very marginal role in the orientation of the multilateral trading

¹⁴ Steve Charnovitz, “Participation of Non–governmental Organizations in the WTO,” *University of Pennsylvania Journal of International Economic Law*, 1996, p. 340, as cited in ICHRDD, “Trading in Rights: The Need for Human Rights Sensitivity at the World Trade Organization,” March 24, 1999, p. 20.

¹⁵ See Nicholas Hopkinson, Summary Report of the Wilton Park Conference on “The Global Trade Agenda” (U.K., December 1998). This was also a concern noted by Ambassador Weekes in his testimony to the Committee on May 11, 1999.

system.” In addition to strengthening the role of parliaments in trade policy making within countries – see again the Committee’s first recommendation – the authors of this study argue that the WTO itself should acquire a formal mechanism for receiving parliamentary input beyond the occasional presence of parliamentary observers at WTO conferences. Indeed, they suggest creating a “WTO Parliament”.¹⁶ A number of witnesses were broadly supportive of measures to include parliamentary oversight among measures to promote democratization of the WTO. For example, the Canadian Council for International Cooperation envisaged reforming the WTO’s structures “to allow parliamentary oversight of the work of the trade ministers who do the actual negotiating.” (*Submission*, Canadian Council for International Cooperation, March 18, 1999) Others, such as the Sierra Club, were more reticent about the notion of a WTO “Parliamentary Assembly,” perhaps concerned that it might compete with a focus on, and the political legitimacy of, WTO–NGO linkages.

The most enthusiastic and explicit argument which the Committee heard was made by the World Federalists:

The trade and governance debate in so many respects boils down to a need for compromise, a need to reconcile competing public policy objectives. In any mature, democratic political community, the single most appropriate and important institution for enabling citizens to be represented is a parliament.

Whereas the WTO is presently made up of representatives of governments who ultimately represent institutional interests within a

nation–state system, a parliamentary assembly would bring a new and different voice to international discourse on trade and governance issues.

The European Parliament and the Parliamentary Assembly of the OSCE provide important examples of how supranational political organs can begin and evolve. We believe this Committee should endorse the goal of creation of a Parliamentary Assembly for the WTO. (Submission, World Federalists of Canada, April 27, 1999)

The Committee recognizes that such a goal would be not be easily realized. Like other substantive structural reforms, it would have to be negotiated among a large number of governments and through a number of obstacles. Nonetheless, we note the positive reaction to the idea of Ambassador Weekes, who observed that it would likely encounter less resistance among WTO members in Geneva than increasing purely NGO–driven participatory arrangements, since elected parliamentary representatives clearly have a mandate to speak on behalf of their citizen bodies as a whole.

Having regard to all of the above, the Committee is convinced that there is considerable scope for Canada to take a lead in “moving the goalposts” forward on several democratic governance and accountability fronts within the institutions of the WTO. As the WTO is still very much a work in progress, we should not try to design a perfect solution in one leap but rather concentrate on ideas for achievable improvements, and on gathering support for such ideas among like-minded countries before, during, and following the Seattle Conference.

¹⁶ Christophe Bellmann and Richard Gerster, “Accountability in the World Trade Organization,” *Journal of World Trade*, December 1996, 50ff.

Recommendation 4

That at the Seattle Ministerial Conference, Canada push for a commitment to examine long-term institutional improvements to the WTO system aimed at strengthening democratic governance capacities, specifically by:

- **bolstering the capacity of the WTO Secretariat;**
- **increasing the availability of capacity-building assistance, as needed by the least developed countries, in order to allow for greater participation by all members in WTO processes;**
- **creating a WTO executive committee composed on a broadly representative basis;**
- **developing more institutionalized relations with civil-society organizations and continuing to improve public access channels; and**
- **giving consideration to the establishment of a Standing Conference of WTO Parliamentarians, composed of representative delegations from member-country parliaments.**

NEGOTIATING AT THE WTO: PROCESS AND PRIORITIES FOR THE NEXT ROUND

"What Canadians are Saying"

...it is not good enough to wait for the agenda to be shaped by others in hopes that Canada can play its traditional 'broker role.' This is a sure recipe for getting rolled.

Gerald E. Shannon, Shannon and Associates
Tuesday, March 2, 1999

We deplore the threats of unilateral retaliation by the U.S. and its bullying tactics. We believe that the prospects of a new kind of trade war are real and we find this a dismaying development that threatens the integrity of the WTO and the NAFTA and their respective processes.

Jayson Myers, Alliance of Manufacturers & Exporters Canada
Friday, April 30, 1999

Canadian business is confident of its ability to compete with the world in an era of more open borders. Globalization is not a dirty word – it represents an opportunity...we cannot hide behind protectionist walls. It is not possible for us to stop the world and get off, as some people seem to want to do. A forward-looking liberalization agenda on trade and investment is imperative for the continued business success of our members and for Canadian prosperity.

Nancy Hughes Anthony and Milos Barutciski, Canadian Chamber of Commerce
Wednesday, April 28, 1999 Toronto

If the next round is to be centred only on agriculture and services, Canada will not have the requisite degree of leverage and muscle to obtain advantageous results there. It will only be possible under the broadest set of negotiations, in which there is more room in trade-offs. In simpler words, because I'm trying to do both here today, we feel that if Canada gets trapped into being focused on one specific issue, such as agriculture, we could lose. If we can have these meetings on the broad-based issues on which Canada is stronger, we could get an agreement that is of much better benefit to Canadian industry.

Lorne Janes, Alliance of Manufacturers & Exporters Canada
Monday, March 22, 1999 St. John's

Sliding back to poorly designed models of sectoral protectionism is not the way forward. Canada faces an enormous challenge if we are to avoid long term absorption of strategic business investment into the large U.S. market. The protectionist forces are strong and getting stronger in America today. For Canada, I see no alternative but to tackle trade policy as a matter of national urgency and priority. A half-hearted approach will surely yield half-hearted results and leave us on a slippery slope down the world rankings of economic performance.

David Emerson, Free Trade Lumber Council
Tuesday, April 27, 1999 Vancouver

Membership has its privileges and its responsibilities; Canada has a leadership role to play. Canada should follow the recommendations of the WTO Review: reduce protection in agriculture, textiles and clothing, motor vehicles and services. Canada should lead by example. It should follow WTO rulings and should work toward eliminating new protectionism.

Professor Eugene Beaulieu, Department of Economics, University of Calgary
Thursday, April 29, 1999 Calgary

Future initiatives must clearly be in the broad public interest, not just the interests of a narrow set of actors. At the very minimum, for the upcoming negotiations on WTO and FTAA, it is important that draft texts be made available for public review. The scope of these agreements is so large that it is imperative that there be full disclosure and democratic debate.

Marc Lee, Canadian Centre for Policy Alternatives
Monday, April 26, 1999 Vancouver

Unless the package in a new negotiation is reasonably balanced, it will fail; and as the Uruguay Round demonstrated, developing countries have considerable power to determine whether the negotiation will succeed or fail. Canada should work to ensure that sufficient proposals come forward that will eventually lead to a balanced agreement in the negotiation. (Submission)

Professor Gil Winham, Department of Political Science, Dalhousie University
Wednesday, March 24, 1999 Halifax

I think this new round will be a long and difficult round and that the American call for concluding it in three years is somewhat optimistic and naive. It's even more optimistic and naive if we consider the fact that this round will also have to deal with an even more difficult area, and that is trying to find a balance between equity and efficiency...I think it is now incumbent upon the world trading system to also address equity issues, by which I mean issues dealing with protection of the environment, with human rights, with labour rights, and to use the WTO as a vehicle not for establishing those rights—I think the WTO is not well suited to negotiating the details of those—but providing a bridge between the trading system and the existing international agreements that deal with those kinds of issues.

Professor Michael Hart, Centre for Trade Policy and Law
Monday, April 26, 1999 Vancouver

Negotiating at the WTO: Process and Priorities for the Next Round

The Process

When he appeared before the Committee on February 9, the Minister for International Trade stressed the importance the government attached to developing a strategic approach to the WTO negotiations, expected to be launched in Seattle in December. In other words, the issue is not whether Canada should or should not be a participant; rather, given that negotiations are going to take place in any event to deal with the mandated negotiations in services and agriculture and to conclude the outstanding issues left from the GATT Uruguay Round, the question is how best to position Canada's involvement in light of the rapidly changing global economy and the need to identify the appropriate policy balance between domestic and trade-related interests.

In May 1998 at the second WTO Ministerial Conference, Ministers decided on a process to ensure full implementation of all WTO agreements and prepare for the Seattle session of the Ministerial Conference. This process provided that the Secretary General would submit recommendations regarding the WTO's work program that should include further liberalization efforts sufficiently broad-based to respond to the range of interests and concerns of all members within the WTO framework so that decisions on a negotiating mandate could be taken at the Third Conference. Priority was to be given to implementation issues including the scheduled negotiations on agriculture and services, future work already identified such as the review of the agreements on sanitary and phytosanitary measures, dispute settlement, government procurement, and the decision on trade and the environment. Lesser priority was given to newer issues that might be brought forward such as investment and competition policy. While not deciding on the eventual scope for the negotiations, Ministers pointed to the prospect of a rather large and broad negotiation.

The preparatory work for the Seattle meetings is now under way in Geneva. Some delegations, including Canada, have tabled proposals and these are being examined. During the summer and autumn the process of identifying possible issues and drafting recommendations for Ministerial consideration will take place. In this connection, Ministers instructed the WTO General Council to also prepare recommendations for decisions concerning the future organization and management of the new negotiations including subjects such as the scope, structure, and timeframes for the negotiations in order to ensure that the work program is begun on time and carried out expeditiously.

The Commission of the European Union was the first to call for a new round after it had secured the support of member states and it has continued to press for a comprehensive negotiation. The United States and Japan also declared themselves in favour of launching a new round, and a number of developing countries, called the friends of the new round, met to declare their support for the project. Some developing countries, such as Egypt, Pakistan, and India have expressed reservations but have not been opposed outright. Thus, the idea of a negotiation larger than the minimum needed to deal with agriculture and services has gained momentum and reflects to some extent the view that a broader negotiation is necessary if progress is to be made on agriculture and services.

The Changing World Trading Environment

The dynamics of the international trading regime in recent years have been phenomenal. Indeed, the situation facing the WTO for this negotiation is quite different than that in 1986 when the GATT Uruguay Round was launched. First, prior to that time, services and agriculture were not integral parts of the trading system as they are today under the WTO and further negotiation for

both this year has been mandated already. Second, the results of the Uruguay Round were adopted as a single undertaking so that all WTO members are parties to all agreements and there is only one class of WTO membership. Third, the WTO now comprises some 134 member countries, almost four-fifths of which are developing, and is continuing to grow almost daily. In 1986 there were fewer than 100 members. Views vary among these countries regarding the nature of a new WTO round. Many are calling for the new round while others question the need for this new initiative when they are still trying to digest the results of the Uruguay Round. Major economies such as China, Russia, Saudi Arabia, Taiwan and the Ukraine are now among some 30 other countries negotiating to join the WTO. Even if these countries are not at the negotiating table when the round is launched, their views and position in world trade will be important in shaping the scope and coverage of the forthcoming round.

At the same time, new bilateral trade arrangements and regional trading blocs have emerged in response to the perceived needs of the countries involved. The Canadian government has attached the highest priority to the maintenance of the multilateral system and has sought to ensure that regional agreements are structured so they contribute to the multilateral system and trade and investment liberalization. Canada has also been particularly active in seeking improved access for exports through initiatives such as the NAFTA; the bilateral agreements with Chile and Israel; discussions relating to the FTAA, the Canada–EU Action Plan, and APEC; negotiations with EFTA; participation in WTO sectoral agreements such as on information technology, basic telecommunications and financial services.

More and more, countries are thinking in terms of trade policy and trade negotiations as also being about regulatory policy. This is not new to the WTO and, indeed, the Tokyo Round Agreement on Technical Barriers to Trade and the Uruguay

Round Agreement on Sanitary and Phytosanitary Measures were designed to ensure that technical regulations and standards which were primarily directed to dealing with domestic market objectives, were not used as protectionist measures against imports. The current issues relating to hormones in meat, genetically modified organisms, and labeling requirements are both domestic and international. In this context, the Committee was informed that rule making internationally does not take away from governments the right to make rules in the public interest for their domestic market. However, regulations that are sanctioned by the international community probably have a better chance to be more effective.

Canadian Interests in the Negotiations

The FTA, the NAFTA, and the WTO Agreements have resulted in a broader rules-based framework covering Canada's trade and investment interests. In some respects this is a reflection of the dramatic shift that has taken place in Canadian objectives and attitudes to the international marketplace over the past decade. Prior to the Uruguay Round, much of the focus of Canadian trade policy was directed to obtaining better access to foreign markets for Canadian goods while retaining as much protection as possible for goods produced at home. Since then the benefits of freer trade in low-cost production inputs, improved competitiveness, and reduced consumer prices have worked their way through the economy.

While the domestic adjustments resulting from these trade initiatives have not been free of difficulty, it now appears to the Committee that the significant realignments required have taken place particularly in the North American context and vis-à-vis the United States. Attention has shifted from a concern with protecting domestic manufacturing through tariffs or other border restraints to the more positive approach of opening foreign markets for Canadian goods and services as a means of enabling Canada to expand its knowledge-based high technology industries

and ensuring a strong, stable, and outward-looking competitive industrial manufacturing base. Throughout the consultations, the Committee has been struck by the almost unanimous support for seeking improved access to foreign markets through the WTO negotiations and the absence of voices calling for the maintenance of the status quo or for protection of secondary Canadian manufacturing import-competing industries.

Evidence submitted to the Committee suggests that the Canadian public generally, and the business community in particular, now fully appreciate that their prosperity is linked to trade performance and that exports make strong contributions to the overall growth of the economy, deficit reduction, and job creation. In this connection, the Minister noted that "all trade is local and foreign trade has become integral to the domestic agenda." Canada's exports of goods and services grew at a rate of 8.1 % in 1998 outpacing GDP growth of 3%, while imports of goods and services rose by 6.1%, reflecting strong domestic investment and consumer demand. Increased merchandise exports created business opportunities across all regions of Canada. Ontario and Quebec were the largest exporting provinces in 1998 with a combined share of 71.2% of total Canadian merchandise exports. The United States was the most important export market taking some 92% of Ontario's exports and more than 80% of the exports of Quebec, Alberta, Prince Edward Island, and New Brunswick. British Columbia and Saskatchewan had the highest exposure to Asia with 27% and 18% of their respective exports going to Asian countries. Newfoundland and Nova Scotia shipped 19% and 13.3% respectively of their exports to Europe.

In the area of merchandise trade, the automotive sector has been Canada's top performer with benefits that were clearly noted for the Committee by Christopher Sands in Windsor (*Evidence*, Meeting No. 128, April 30, 1999). However, there was also strong export growth in machinery and equipment: for example, industries producing

a wide range of goods, including industrial machinery and tools, information technology equipment, telecommunications equipment, agricultural machinery, construction machinery and medical equipment and their parts and components. In 1998, 85.2% of these exports went to the United States, reflecting a strong demand in that market for Canada's specialized knowledge intensive, high technology goods sectors, facilitated by the open trade policy pursued during the 1990s.

Canada's Ambassador to the European Union, Mr. Jean-Pierre Juneau, pointed out to the Committee that the EU is our second most important trading partner after the United States, accounting for Canadian exports of more than \$15 billion last year. He also noted that since most of our trade with the United States is governed by NAFTA, the EU will be one of our most important negotiating partners in the new WTO round. In this context, apart from agricultural concerns, the Committee was informed that Canada continues to face high tariffs on fish, value added forestry products, and non-ferrous metals. At the same time, the EU gives certain tariff preferences to other countries resulting in significant competitive disadvantages for Canadian goods. A new round should provide an opportunity to seek reductions in the EU MFN tariff rates resulting in a more level playing field for Canadian exporters. The Committee addresses this in more detail in Chapter 5.

Services constitute the fastest growing segment of world trade. Barriers to trade in services are less visible than for trade in goods and can include qualification requirements and procedures, technical standards, licensing arrangements, and unclear administrative regulations. The development and application of open and more secure rules and conditions to improve international trade in services and access for Canadian service providers was supported by many witnesses that appeared before the Committee. Knowledge-intensive commercial services including engineering, communication-technology, finance, research and development, royalties, and management services

accounted for 47.6 % of our services exports and 45.7% of our services imports in 1998. Travel and transportation services were other major contributors to services trade growth in 1998. The United States is Canada's principal services market. In continental terms, and globally, Canada has major services interests to pursue as we elaborate in Chapter 6.

The proposed agriculture negotiation will likely revolve around coming to grips with the implementation of past commitments, especially in respect of export subsidies, and seeking improved market access for commodities now subjected to high levels of protection. This will not be an easy negotiation; however, as it will not be necessary in these negotiations to confront many of birthing difficulties that were associated with bringing this sector into the trading system during the Uruguay Round, progress on the agricultural front should not be as pivotal this time around in striking a balanced package of concessions. Nonetheless, the European Union continues to have strong vested interests and sensitivities in this area and will be seeking an equitable balance of concessions in a comprehensive round. By the same token, the Canadian agricultural industry emphasized their view at our hearings that Canada's trading partners have not lived up to past commitments in this sector and, until they do, Canada should not put forward further concessions. They also stressed that in the negotiations one area of the agriculture sector should not be sacrificed for another, such as offering concessions in the supply managed sector for better access on grains, oilseeds, and so forth. We address this further in Chapter 4.

The relationship between trade and foreign direct investment (FDI) was raised by many witnesses. During the last decade FDI flows throughout the world have grown faster than either international trade or GDP. The increase in FDI into Canada between 1993–1997 averaged \$11.5 billion annually. In 1998 it grew by \$22.9. There were also major flows in the other direction. Canadian

direct investment abroad averaged \$17.8 billion annually between 1993 and 1997 and in 1998, it reached \$39.8 billion, the third year in a row that outflows exceeded inflows. These investments generally bring benefits in terms of export opportunities for both goods and services, access to new technologies, resources and skills, and higher productivity and job growth.

There was a broad consensus among witnesses that for Canada, as the most trade-oriented country in the G8, effective trade rules are vital to ensuring stable economic growth and preventing other economies from operating in an unfair, closed, discriminatory, and unpredictable manner. As such, Canada is expected to take a leading and constructive role in the negotiations to ensure that any new WTO rules and procedures are transparent and implemented in an objective manner to promote trade facilitation and liberalization. Clear, coherent, and integrated directions for our negotiators will be key to achieving this objective.

Scope and Timing of Negotiations

There is by no means any consensus internationally on the scope of the forthcoming negotiations. Indeed, it will probably be some months before the major participants spell out their positions. The EU and Japan have suggested a broad approach to the negotiation covering all issues, in which nothing is decided until everything is decided, and that the round be completed within a three year timeframe. The United States on the other hand had indicated that it would be seeking quick accords sector by sector. The issue of fast track authority for the U.S. administration to enter into these negotiations, however, is by no means a foregone conclusion. While officials do not need this authority to begin the discussions, efforts by officials to include sensitive issues on the agenda or to finalize agreements will be directly influenced by their ability to gain congressional approval for fast track. Moreover, without this authority, governments of other countries will be

reluctant to enter into a deal with the United States.

The Minister for International Trade has expressed a view that negotiations should deal with clusters of issues as opposed to an unwieldy round covering all topics or a sector by sector approach. At the meeting of Quadrilateral trade ministers held during the week of May 10 in Tokyo, it was agreed that negotiations should be launched in November/December, they should cover agriculture, services, global rules for non-discrimination on foreign investment and other items ranging from culture to environment, but that the list should be kept "manageable" and negotiations should be concluded within three years. In this connection, while they have not yet put forward a view as to the scope the negotiations might take, the developing countries appear to attach the highest priority to continued trade liberalization to assist them in achieving their development objectives. As such, they can be expected to take a major role in the decision-making on this issue at Seattle.

The Committee heard a variety of views concerning the scope and direction for the negotiations. Professor Winham (Dalhousie) argues for a broad agenda to maximize negotiating opportunities. Professor Wolfe (Queen's) suggests the round should be comprehensive rather than based on clusters and that it should be completed within a maximum of four years. Our former Ambassador to the GATT, Gerald Shannon told us that one lesson from the Uruguay Round is that sectoral negotiations cannot succeed because of difficulties in striking a balance and the cluster approach will likely face opposition from the developing countries. The Canadian Chamber of Commerce expressed the view that the round should be comprehensive but should not preclude reaching and implementing early decisions where possible. Others expressed some skepticism about completing a comprehensive round within a three year time limit and Jeffrey Schott suggested to the Committee that the WTO should institute a

system of continuous negotiations so that when talks are completed on one issue new items are added to the list. Mr. Schott argued that there is a need to break away from the GATT concept of specific rounds dealing with particular issues to a more broad based approach in which countries can conduct a series of seamless trade negotiations where each round builds on the previous accord.

As noted above, the WTO's built-in agenda already mandated negotiations by the end of this year on both agriculture and services, and also includes a number of other important items arising out of the existing agreements ranging from government procurement to subsidies. As we analyzed in Chapter 1, the organization is also experiencing growing pains and inadequate resources to carry out the many functions imposed on it as a result of the Uruguay Round agreements, including conducting the trade policy reviews, difficult accession negotiations, dealing with the caseload emanating from the dispute settlement process, and responding to demands for greater transparency in its operations including a role for non-governmental organizations. There is also serious concern about the management structure and its ability to move the organization forward in cooperation with the IMF, World Bank, and other international organizations in the face of continuing globalization of trade, investment, and financial flows and their effects on domestic production, employment, and regulatory policies. These are all important issues which must be addressed and will likely find their way onto the agenda for the new round.

One issue that a number of delegations have proposed for negotiation is tariffs on industrial goods which, when taken together with services and agriculture, comprise the ingredients for a major negotiation. However, current indications suggest that the Millennium Round will also likely venture into relatively virgin territory as WTO member countries attempt to come to grips with the relationship between trade and other strategic policy areas such as the environment, labour standards, competition, intellectual

property, e-commerce and investment. Many witnesses told the Committee that all of these policy areas are interrelated in the same way that domestic economic issues are inextricably linked to the international economy and can no longer be dealt with in isolation or on an individual basis.

Dr. Sylvia Ostry noted in her Toronto submission that “the deeper integration agenda covering trade investment and technology flows incorporates intrinsic pressure for convergence which is reinforced by locational competition for investment.” Further, she noted that with “... deeper integration, trade is not trade. No trade minister is responsible for services: indeed, there is no minister of services. No trade ministry has the expertise necessary to deal with intellectual property or the environment or competition policy. Trade policy today rests on advanced and sophisticated governance and legal systems including effective coordinating mechanisms and access to technical expertise.”

The New Issues

The list of potential new issues being discussed for inclusion on the agenda are contentious and by no means generally supported. The prime candidates for new WTO talks are investment, competition policy, labour, and the environment. Electronic commerce is also being mentioned as a possible topic. These issues are not entirely new to the WTO and their relationship to trade matters has been acknowledged for some time. The main difficulty with their inclusion relates to the fact that these are areas traditionally regarded as the exclusive preserve of domestic policy and there is considerable nervousness about first, expanding international disciplines to cover them and second, what are the most appropriate international institutional arrangements that should be put in place to deal with them.

Competition policy has been high on the possible list of new items for inclusion in WTO trade negotiations for some years and has been the subject of bilateral discussions for some time. The linkages between trade and competition

policy has been clearly recognized in the literature and the WTO Agreement on Basic Telecommunications includes pre-competitive regulatory commitments. Moreover, mergers and acquisitions between transnational corporations bring to the fore the lack of any effective international mechanism to deal with issues that arise in these cases. Trade-related competition policy is a major item which is not likely to lend itself quickly or easily to being incorporated into the WTO. Indeed, many WTO Member countries do not have domestic legislation covering restrictive business practices or anti-trust matters. Nonetheless, it can be anticipated that some movement will be made in this area in the forthcoming round. As Ambassador Weekes noted before the Committee, “the question, I think, is how do we address competition policy not whether we address it.”

Investment is also a difficult issue as was clearly demonstrated last year in the discussions relating to the attempt to establish a multilateral agreement on investment in the OECD. This was also the subject of hearings by this Committee. At that time, the Committee expressed certain reservations and, in the event, the MAI did not succeed. There is little question that investment policy is increasingly also a trade issue. In the real world the two are virtually inseparable and investment rules are provided for in certain regional agreements such as NAFTA. The WTO as it now stands incorporates investment provisions in the services area (telecommunications and financial services) and, in the goods area, the Trade-Related Investment Measures Agreement was agreed to in the Uruguay Round. Whether or not a multilateral agreement on investment in the WTO can be negotiated, given the much broader based membership of the WTO and the more diverse range of opinion likely to be brought to the debate, appears to be an open question at this stage, but the subject is sure to attract considerable attention in the coming months. We will address the issue in detail in Chapter 10.

The Asian financial crisis has, and continues to have, a significant effect on global financial stability and trade. Likewise, the uncertainty stemming from the economic situation in Russia and some Latin American economies highlights the interrelationships between trade and economic/political developments. These, together with the difficult situation facing many developing countries, especially the least developed, point to the need for new international initiatives to promote sustained economic recovery and growth. The pursuit of trade liberalization through a new WTO negotiation may be one important measure that can be taken in this direction. The Committee comments further on these issues in Part IV of the Report.

Canada is not immune to the upheaval that has taken place over the past few years in international markets. Indeed, exports, especially from western Canada, have been severely affected by the Asian crisis and the Canadian dollar has been subjected to unnatural pressures despite healthy economic fundamentals. As a country heavily dependent on international trade for economic growth and jobs, we cannot sit by and allow other countries to set the parameters and terms of reference for a new negotiation round. At the same time we must recognize that we are a relatively small economy and as such we must be careful to identify our areas of priority interest and focus our attention to achieving objectives in those areas.

Environmental issues are particularly sensitive in the context of the world trading system. Clearly, environmental concerns can overlap with the general principles of the WTO directed to removing and minimizing barriers to international trade in goods and services. In recent years there have been several high-profile cases in which WTO panels have not been able to address the concerns of the environmental community. At the conclusion of the Uruguay Round, the WTO established a Committee on Trade and the Environment to explore the relationships involved and consider possible approaches for dealing with

the issues. More recently, the WTO organized a High-Level Meeting on Trade and the Environment that provided an opportunity for the trade and environmental communities to discuss a wide range of issues. The work to date has been inconclusive and, while it is important to be realistic as to what the WTO can or should do in this area, indications suggest that it will be a priority item for possible inclusion in the new round. Hence we devote detailed consideration to these issues in Chapter 12.

The whole issue of trade-related labour matters raises serious politically sensitive concerns about how far international trade disciplines can be brought to bear to strengthen international labour standards and enforcement mechanisms. Indeed, the more basic question is whether the WTO should have any role whatsoever in an area already served by another body, the International Labour Organization. Here again, it can be expected that there will be a wide range of views between WTO Members as to whether this item should be on the agenda and, if so, how it might be addressed in the negotiations. We address this debate in Chapter 13.

Electronic commerce may also find its way onto the agenda in recognition of the growth that has already occurred and the phenomenal expansion foreseen for e-commerce in the future. This basically is an unregulated area of both domestic and international commerce. At the May 1998 Ministerial meeting, a standstill was declared on the imposition of customs duties on electronic transmissions and a work program was launched. It appears to the Committee that a substantial educational process is needed in this area to identify the impacts of e-commerce on production, distribution, marketing, sale, and delivery of goods and services. It is an open question as to how far one might be able to take this matter at Seattle, although an OECD Ministerial Conference in Ottawa in October 1998 concluded that it needs to be addressed at both the international and domestic level. The expectation is that it will be raised at the Seattle meeting and Canadian negotiators will need to be in a position

to address it. We consider this further in Chapter 8.

Some witnesses before the Committee argued that expanding the WTO agenda to cover non-traditional trade items could be a mistake (the Polaris Institute) and could overload the relatively new and fragile WTO dispute settlement system before it has a chance to mature (International Institute for Sustainable Development). In this regard, while there is general support for the proposition that Canada benefits from a rules-based system, some question whether the WTO can regulate all domains of international economic life (Robert Wolfe), or argue that there is a danger of the WTO becoming overly legalistic in its approach (Lawrence Herman) and, as such, ill equipped to respond to the broader policy concerns associated with issues that may be only indirectly trade-related. The Alliance of Manufacturers & Exporters Canada advised the Committee that because of the importance of direct investment and services and innovation in the global economy, Canada has a stake in extending the upcoming negotiations beyond the traditional scope of the WTO framework, but social issues should only be addressed in the WTO to the extent that they relate to market access and trade and investment. The Canadian Chamber of Commerce suggested that while non-trade issues such as environment and labour cannot be absent from trade agreements, the question remains as to how to deal with them. "Social issues are not the WTO's core business and should be left to the organizations designed to deal with them." The Committee deals with this debate in Part III of the Report.

Consultations and Civil Society

The Minister for International Trade advised the Committee that the government supports regular contact between multilateral organizations and civil society, recognizing that public interests need to be heard and public understanding of the issues

and processes improved. The Committee strongly supports the inclusion of civil society as much as possible in the process, given that this negotiation will embrace many non-specific trade policy areas that can affect domestic regulatory policy, much of which is within provincial government jurisdiction. As such, it is imperative that the provincial governments, NGOs, and other interested parties be involved. However, the Committee recognizes that this may not always be practical or possible at each stage and on all issues in the negotiation. The work of this Committee is one element of the current consultation process. Particular care will need to be exercised throughout the negotiations to ensure as comprehensive consultations as possible take place with all interested segments of Canadian society. We believe that the recommendation made in the previous chapter will go a long way to meeting this objective.

A Strategic Approach

How should Canada approach the identification of issues to be included in the forthcoming WTO round and the Ministerial meeting scheduled for December in Seattle? As indicated above, it is perhaps a little early to be too definitive in this regard. However, based on the volume of presentations and briefs submitted to the Committee, it is quite obvious that Canadians have opinions and they want their voices to be heard in the process. In the subsequent chapters of this Report, specific subjects that will probably be on the agenda for the negotiations will be addressed. The range of issues, whether they concern further tariff liberalization, government procurement, agriculture, technical barriers to trade, trade remedies, trade facilitation, rules of origin, any of the multitude of commercial services that are or could be embraced within the WTO, or the new issues of competition, labour, investment, or the environment must be examined on their own merits and within the context of an overall strategic approach that seeks to balance

Canada's longer term economic and societal needs.

Nonetheless, the Committee has decided that it is not too early to set out at least some of the basic broad principles and parameters that should govern Canada and its negotiators throughout what is, at this stage, shaping up to be one of the most important and far reaching international economic initiatives on the horizon. We would suggest the following guidelines for consideration of the Government:

- Given the size of Canada's market and population, it is clear that Canada must rely heavily on foreign markets for our continued growth and prosperity. As such, the first priority in the new WTO round must be to seek improved access to world markets for all Canadian goods and services as well as high technology and knowledge-based products and innovations and services that will enhance the productivity and competitiveness of Canadian industry to better position and serve world markets. In this context, it will be particularly important for the Government, in close consultation with the business community and the provincial governments, to identify as quickly as possible those markets, products, and trade barriers which Canada should target for the negotiations.
- As a relatively small country, Canada must continue to rely on the WTO rule-based trading system as the primary mechanism for protecting its international trade interests. As such, Canada's goal in these negotiations should be to ensure that existing WTO agreements are clarified where necessary and made as transparent as possible. Any new agreements concluded relating to the new issues should likewise be clear, precise, and free from ambiguity. While Canada should continue to pursue bilateral and regional trading arrangements, these should be fully consistent with the trade rules negotiated within the WTO.
- Canada took a leading role at the Uruguay Round in putting together the present dispute settlement system. That system is proving to be one of the most important features of the entire WTO, and while it is not perfect, its effectiveness has made it very attractive to other international organizations who lack similar methods for resolving disputes. Care must be taken in the new round not to over-burden the system, and Canada should be in the forefront ensuring that the integrity of the system is maintained as improvements are negotiated.
- In an interdependent globalized world economy, merchandise and services trade are closely linked to foreign investment flows, access to new innovations, ideas and technology, and the movement of individuals and management skills. An increase in goods trade is usually accompanied by increased trade in services, investment, and so forth, particularly in the high-technology and services sectors. The Millennium Round has the potential to open new and expanded opportunities for Canadian business in all of these areas of economic activity and this objective should be at the top of the agenda of Canadian officials both in the lead-up to and in the course of the actual negotiations.
- The Government should remain somewhat flexible in terms of the timing for the new round, recognizing that the major players have yet to clearly signal their positions. Although support appears to be developing for a three year time limit, the Committee is mindful of those witnesses who suggested that three years may not be adequate to complete all the work being proposed for the round. The Committee would not be averse to seeing alternative arrangements that would allow decisions to be taken on particular items as agreements are reached but within the context of a manageable overall time limit of between three and four years.
- The Committee is not at this stage prepared to take a firm position on what new issues should or should not be included in the negotiations per se. The scope for the negotiations is still very much undecided. This will be resolved definitively probably only at the Seattle meeting. As indicated above, the Committee believes that the agenda will embrace a number of new issues, all of which are complicated and politically sensitive. It is an open question as to how far any of these issues can be taken at the Seattle

meeting and indeed, the initial effort to come to grips with these matters may focus on study and exploration rather than formally launching negotiations. In any event, whether they involve a launch or something less committal such as defining terms of reference for a study group, Canada's negotiators must be fully prepared to engage in the discussions of all the items now being suggested for inclusion, as Canada has a vital stake in seeing progress made in all of these areas.

- The major countries from which Canada will be seeking concessions in the new negotiations are in favour of a broad-based negotiation. While tariff issues with our principle trading partner, the United States, are mainly covered by NAFTA, non-tariff issues, services, agriculture, and the new issues will figure prominently in these bilateral discussions. In the EU and Japan, Canadian exporters continue to face formidable tariff and non-tariff barriers to goods and services, as they do in other developed and developing countries. At the same time, our negotiators will need to take into account the concerns of some domestic stakeholders, especially in agriculture, that one sector not be sacrificed for another and no important sector of the economy is worse off as a result of the negotiations. It appears

to the Committee that the ingredients for a broad-based round of WTO negotiations are present and, in our view, this approach offers the best possible avenue for Canada to achieve a balanced outcome. Accordingly, the government must carefully consider the various proposals being brought forward for negotiation and consider them on their merits having regard to Canada's overall interest.

- The Committee heard many comments from witnesses concerning the need to include civil society in the consultation and negotiating process. The Committee supports this view and is conscious of the fact that existing mechanisms may fall short of what is needed to accomplish this objective. This is not a problem unique to Canada nor is there any single simple answer. One suggestion put forward in this context was that strategically it might be helpful if an attitudinal change were to occur within Government from one of "us-versus-them" to one in which all stakeholders were genuinely treated as partners in a cooperative process. This subject was discussed at length in the Report's introduction and the Committee's recommendations flowing from that discussion should be an integral element of the Government's strategic approach to this negotiation.

Recommendation 5

The Government should adopt a strategic approach based on the following guidelines to prepare for, advance and defend Canadian interests throughout the negotiations:

- seek improved access to world markets for all Canadian goods and service through tariff reductions and new and improved agreements on non-tariff issues;
- support initiatives for a broad-based negotiation as the best approach for Canada to achieve a balanced outcome in a new round, especially for agriculture and services;
- remain flexible regarding time limits for a new round at least until the agenda is agreed;
- continue to rely on the WTO rules-based system to protect Canada's trade interests;
- seek improvements in and protect the integrity of the WTO dispute settlement system; and
- include civil society more fully in the consultation and negotiation process.

IMPLEMENTATION OF THE WTO AGREEMENTS AND DISPUTE SETTLEMENT

“What Canadians are Saying”

In the Canadian context, implementation of WTO results on non-tariff matters often falls within the purview of the provinces. This makes it imperative that provincial and territorial trade ministers be on side with Canadian positions internationally. Canada really cannot effectively negotiate internationally if our approaches are being second guessed at home or if sub-national jurisdictions are competing at cross purposes with each other.

Nancy Hughes Anthony, Canadian Chamber of Commerce
Wednesday, April 28, 1999 Toronto

What you find is that many of the agreements that were negotiated under the Uruguay Round, which came into effect in 1995, in fact haven't been implemented by many of the signatory countries. The intellectual property is a notable area of laggardness, for example, but it's much broader than that. The whole issue of implementation and how you enforce implementation and make sure that countries actually do what they commit to do when they sign these agreements, it seems to me, is a real hole in the current regime of the WTO.

Professor Brian Russell, School of Business, Dalhousie University
Wednesday, March 24, 1999 Halifax

There is a grey area in the WTO agreement, in the dispute settlement understanding, dealing with the implementation issues. That is a matter that is not easy to resolve. It is part of the current so-called bananas dispute between the United States and the EU. This is something that has to be addressed in the WTO to resolve this issue about what happens when a panel issues a decision and the losing party doesn't implement it or doesn't implement it in a satisfactory way.

Lawrence Herman, Cassels, Brock, Blackwell
Tuesday, March 2, 1999 Ottawa

Of the technical assistance offered by the WTO itself, 80 percent relies on ad hoc, voluntary contributions from a small number of countries, making planning difficult. It would appear to be time for an evaluation of these disparate efforts and for their better co-ordination...Canada should support the case for increasing the regular funds for WTO technical assistance, and in the interim should make a contribution to the WTO Special Fund for this purpose. In addition, technical assistance is needed to ensure that developing countries are able to take advantage of the WTO's dispute settlement system – still thought to be one of its major achievements...But most countries lack appropriate legal expertise and, as the WTO's capacity to provide legal assistance is severely limited, in most cases they have had to use international law firms. The high costs limit their capacity to know let alone defend their rights. Thus, a number of countries have proposed the creation of an Advisory Centre on WTO Law...Canada should make a financial contribution to the proposed Advisory Centre on WTO Law.

Ann Weston, North-South Institute
Thursday, March 18, 1999

It's an extraordinary situation when a foreign company can challenge the Canadian government on having passed a law in the public interest, and the Canadian public is not entitled to know that challenge has been made.

Professor Howard Mann, Faculty of Law, University of Ottawa
Tuesday, March 16, 1999

When domestic law is being overturned by trade agreements negotiated in secret by representatives of the Crown to the exclusion of Parliament our entire system of democracy is in grave danger.

Stephen Kerr, Concerned Citizens
Tuesday, April 27, 1999 Toronto

Although the WTO is made up of members who are not elected by Canadians, the World Trade Organization has the ability to challenge the democratic decisions of the Canadian government...

The World Trade Organization does this by threatening governments with sanctions that are too severe for even the wealthiest nation to ignore.

Damien McCombs
Monday, April 26, 1999 Vancouver

I think probably most Canadians don't understand what was accomplished with the WTO and the transformation of enforcement mechanisms that occurred when the WTO was created. We transformed basically a regime that existed to facilitate consensual dispute resolution among the parties to the GATT into a regime that actually had effective enforcement mechanism. Now the rulings of panels are automatically implemented within 60 days of being issued unless they're appealed. Then the same rule applies with respect to decisions of the appellate board unless every single member of the WTO agrees to block implementation.

Steven Shrybman, West Coast Environmental Law Association
Tuesday, April 27, 1999 Vancouver

I keep hearing about rulings the World Trade Organization is making. They seem to come out of the blue. When those pronouncements are made, it's almost as though they have come out of some naturally ordained set of rules. I would contend that should not be the case. The World Trade Organization should never be given powers that we as citizens cannot change when we collectively determine it is desirable to do so.

George Harris
Monday, April 26, 1999 Winnipeg

Canadians would be shocked to know that United States and Canadian governments can force feed Europeans beef products with growth hormones or other genetically-modified organisms such as cooking oils and potatoes. The idea that democratically-arrived at legislation could be knocked out by a trade agreement is just shocking to most people...

Christine Elwell, Sierra Club of Canada
Wednesday, April 28, 1999 Toronto

The CLC endorses the important proposals which have been made by the International Confederation of Free Trade Unions (ICFTU) to greatly broaden WTO trade policy reviews of member countries to include a thorough assessment of the social impacts of liberalized trade. The much neglected specific impacts upon women need to be made a major focus of this work.

Robert White and Andrew Jackson, Canadian Labour Congress
Tuesday, April 27, 1999 · Toronto

...in those cases where a dispute does occur, we must have dispute resolution mechanisms that are responsive, i.e. quick, fair, powerful, and definitive. Resolution of disputes under the Softwood Lumber Agreement today is a crapshoot that is largely unpredictable. You may win, but you still lose because of long delays, high costs of dispute resolution and the likelihood that rules will simply be changed to secure the interests of the large market partner in any event...Small loopholes quickly become major structural flaws and disputes quickly escalate. Industry and government need to establish mechanisms for preventing trade policy abuses and dealing with them quickly and effectively. Early action could have neutralized recent conflicts over drill studs, softwood lumber, and other so-called value added products.

David Emerson, Free Trade Lumber Council
Tuesday, April 27, 1999 · Vancouver

This plethora of new issues dealt with under the WTO and the signing of agreements in these various areas mean that there is now the risk that the agreements and commitments may contradict each other. A well-known example is the inconsistency between the GATT and the General Agreement on Trade in Services, the GATS. Most recently, this conflict was highlighted in the banana dispute which you have all heard about and the magazine issue which Canada is directly involved in the present. In these disputes, the problem has arisen of trying to determine whether national initiatives involved services or goods, and the decision made often surprised the governments concerned. Having worked on this services issue, for example, I think that it is inevitable that we will see more and more of this type of dispute. Clear rules in this respect will need to be developed in the upcoming negotiations.

Professor Ivan Bernier, Faculty of Law, Laval University
Monday, March 22, 1999 · Quebec City

I do not believe—and I'll be quite frank about this—that transparency means the same thing as accessibility. I do not believe it would further the interests of Canada or enhance the rule of law internationally to have interest groups or private persons taking part in WTO dispute settlement processes. That does not mean the state cannot convey the views of those interest groups, but I do not believe it is consistent with the notion of the WTO as an international institution.

Nor do I believe that the dispute settlement procedures would be enhanced, furthered, and made more efficient by allowing private parties access to that system. That is not a retrograde position. I happen to believe state-to-state dispute settlement functions well. I also believe we have some way to go in developing a level of experience with the WTO processes, and it is probably too early to make certain judgments about the efficacy of those processes.

Lawrence Herman, Cassels, Brock, Blackwell
Tuesday, March 2, 1999

As for the Canadian approach to [dispute settlement] ..., it is very easy to view all of this from the point of view of gains or losses, namely, how many cases Canada has won or lost. In doing this type of analysis, it is important to take into account reasonable expectations at the outset. The results achieved have to take into account the rules and measures adopted by governments, be they federal or provincial. We have to ask ourselves whether the analysis carried out by the appellate body or the special group took these rules into account. This is the important point in determining the Canadian government's approach in assessing the results achieved subsequent to negotiations...So we have to keep in mind the question of whether Canada's priority is to reopen the whole discussion on procedure or to adopt a very focussed approach, namely, to look at the specific questions that have been raised in the cases to date.

Serge Fréchette, Thomas & Davis
Tuesday, March 16, 1999

The juridification of the system creates a built-in reinforcement process. However, the tendency to appeal rules already seems part of the system and one would expect that more and more panel reports would be written for the appellate body rather than the parties. A cry of 'laissez-litigez' will soon be heard.

Professor Sylvia Ostry, Centre for International Studies, University of Toronto
Tuesday, April 27, 1999 Toronto

Implementation of the WTO Agreements and Dispute Settlement

Each WTO member has implemented and ratified the WTO Agreements in accordance with its own internal procedure. On the other hand, the fact that members have ratified the Agreements is no guarantee that they are adhering to their commitments. In the following pages, we review what implementation of the WTO Agreements consists of, and how it is monitored to ensure adherence to the commitments arising out of them. We also address the mechanism used by a member to secure compliance by another member with its obligations, that is, the dispute settlement procedure. (For an explanation of the structure of the WTO Agreements and the scope of those obligations, see Appendix 3A to this Chapter.)

Implementation of the WTO Agreements

The member countries must implement their obligations under the WTO Agreements, that is, they must incorporate the rules designed to ensure that their market is open in their own jurisdictions. To that end, in many cases, they must amend their legislation and regulations, or adopt new ones.

Over the years, the industrialized countries have established an elaborate system of rules governing commerce and foreign trade. For example, Canada has enacted the *Customs Act* and the *Customs Tariff*, the *Special Import Measures Act*, and the *Canadian International Trade Tribunal Act*. The industrialized countries generally have a legislative and regulatory system comparable to Canada's. On the other hand, the developing countries, and more specifically the least developed countries (LDCs), do not have as elaborate a legislative or regulatory framework. In many cases, those countries do not even have the human and material resources that would enable them to adopt such measures.

Accordingly, the burden associated with implementing the obligations arising out of the WTO Agreements varies from one member to another. For most of the industrialized countries, implementation of these Agreements may be achieved fairly easily, and even fairly speedily. The administrative structures of those countries are sufficiently developed for them to be able to proceed with implementation. On the other hand, implementation of the obligations arising out of the WTO Agreements creates a number of problems for the less developed countries, and more specifically the least developed countries.

If we take into account the fact that Canada has had to amend nearly thirty statutes in order to implement its obligations under the WTO Agreements before the treaties signed on April 14, 1994 at Marrakesh were ratified by Cabinet, it is easy to imagine the burden that implementation of these Agreements represents for developing countries.¹

Implementation of the WTO Agreements is crucial to the success of the Organization. At the end of the second Ministerial Conference, which was held in Geneva in May 1998, the members recalled that fact in their final declaration in the following terms:

*Full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative for the credibility of the multilateral trading system and indispensable for maintaining the momentum for expanding global trade, fostering job creation, and raising standards of living in all parts of the world.*²

Implementation of the commitments arising out of the WTO Agreements is a collective effort by all members of the Organization. Liberalization of trade, and the prosperity that will result, can be

¹ *World Trade Organization Implementation Act*, S.C. 1994, c. 47.

² *Ministerial Declaration*, adopted on May 20, 1998, document WT/MIN(98)/DEC/1, 25 May, 1998, paragraph 8.

achieved only if all members adhere to their commitments. The committee is persuaded that implementation of the WTO Agreements is an essential step on the road to liberalization of trade.

Difficulties encountered in implementing the WTO Agreements

As may be seen, the WTO Agreements have a significant impact on developing countries. Another way of saying this would be that it is the reality of trade liberalization that is having an effect on those countries, just as it is on the developed countries and the populations of those countries. A number of witnesses provided us with examples of the effects of the restructuring of the economy on people in Canada and in developing countries.

The members of the WTO have been aware of the difficulties encountered by the developing countries since the Organization first began its activities, and in fact they have established a working group on this subject: the Subcommittee on the Least Developed Countries, which reports to the Trade and Development Committee. The members of the WTO believe that the capacity of the least developed countries to benefit from participation in the multilateral trade system is closely tied to their ability to implement the WTO Agreements. In fact, the assistance provided to the least developed countries is based on that premise: the desire to enhance their capacity to benefit from the liberalization of trade.

In the course of its work, the Subcommittee on the Least Developed Countries identified the main problems facing those countries in terms of implementing the Agreements and participating in WTO activities.³

- The various government departments concerned with trade issues did not know how (or simply did not have the capacity) to

coordinate their activities in order to implement the WTO Agreements and meet certain requirements imposed on members, such as notifications.⁴

- The least developed countries do not have the administrative and institutional mechanisms to meet the need for investigations into questions such as safeguards, subsidies and compensatory measures, antidumping practices, technical barriers to trade, sanitary and phytosanitary measures, and copyright.
- Public servants in the least developed countries are not sufficiently well-trained to be able to implement the WTO Agreements or provide notifications.
- Implementation of the WTO Agreements will require that least developed countries adapt their legislation and regulations to adhere to their commitments. Here again, resources are either inadequate or simply non-existent.
- In technological terms, very few least developed countries have the equipment and the skilled personnel that would simplify the job of managing their trade policy.
- The least developed countries need assistance in developing their trade policy, at least in part.

Sylvia Ostry explained that the difficulties encountered by the poor countries were closely tied to the level of development of their institutional infrastructures: governance, education, legal system, regulatory policies, and so forth. In her view, what must be done to remedy these difficulties is to upgrade these elements and attack the problem of marginalization.

Assistance to the Less Developed and Least Developed Countries

In their final declaration at the end of the first Ministerial Conference, which was held in Singapore in December 1996 (Singapore Conference), the members of the WTO renewed

³ *Implementation of the WTO Agreements: Survey of the Difficulties faced by Least-Developed Countries and the Current Response*, document WT/COMTD/LDC/W/10, Geneva, WTO, 19 October, 1998.

⁴ A number of the WTO Agreements require that members submit information and documents to the WTO Secretariat regarding their legislation or economic programs. Because they lack the resources or the skills, the LDCs are having a lot of difficulty complying with these requirements.

their commitment to “the integration of developing and least-developed countries ... into the multilateral system.”⁵ They also agreed to establish a technical assistance program⁶ to facilitate the integration of these countries into the global economy, and they adopted a *Comprehensive and Integrated WTO Plan of Action for Least Developed Countries*.⁷

These commitments resulted in the adoption of an Integrated Framework for Trade-Related Technical Assistance, including for human and institutional capacity-building, to support least-developed countries in their trade and trade-related activities (Integrated Framework for Assistance to the Least Developed Countries), in October 1997.⁸ This program is the most important “for trade-related technical assistance for human and institutional capacity-building for supporting trade and trade-related activities of the least developed countries and enhancing their supply response.”⁹ Six organizations are involved in this program in addition to the WTO: the United Nations Conference on Trade and Development Program (UNCTAD), the International Trade Centre (ITC), the International Monetary Fund (IMF), the World Bank and the United Nations Development Program (UNDP). The participation of these six organizations in a joint program allows for aid and assistance efforts to be better integrated. The primary objectives of the activities supported by this program are:

- to upgrade institutional capacity in order to deal with trade policy questions;
- to increase export capacity;
- to develop business support services;

- to upgrade the capacity to facilitate trade;
- to train and utilize human resources, primarily in the four foregoing fields;
- to assist in creating a general framework governing issues relating to trade which encourages trade and investment.¹⁰

This assistance program operates in stages: needs assessment, division and coordination of work among the participating organizations, funding, implementation and monitoring of assistance activities, and review and evaluation of activities. These activities may take a variety of forms, such as national and regional seminars, trade policy courses or technical missions. To date, 39 of the 40 LDCs that have expressed a desire to benefit from the Integrated Framework for Assistance to the Least Developed Countries have had a needs assessment and division of work.¹¹

The WTO also sponsors other programs to provide assistance to the least developed countries in the form of seminars, workshops, technical missions, and information meetings. The less developed countries can also receive aid in the form of legal assistance to make it easier for them to participate in dispute settlements.¹² The WTO also offers them training placements dealing with the rules and procedures governing dispute settlement.¹³

In Canada, the Canadian International Development Agency (CIDA) has offered development assistance for several decades. It has already made a contribution to a joint fund under the Integrated Framework and makes an annual contribution to the International Trade Centre (ITC). The Committee is of the view that the

⁵ *Singapore Ministerial Declaration*, adopted December 13, 1996, paragraph 6.

⁶ *Ibid.*, paragraph 13.

⁷ *Comprehensive and Integrated WTO Plan of Action for Least Developed Countries*, document WT/MIN (96)/14, Geneva, January 7, 1997.

⁸ *An Integrated Framework for Trade-Related Technical Assistance, including for Human and Institutional Capacity-Building, to Support Least-Developed Countries in their Trade and Trade-Related Activities*, document WT/LDC/HL/1/Rev.1, Geneva, 23 October, 1997.

⁹ *Ibid.*, paragraph 1.

¹⁰ *Ibid.*, paragraph 2.

¹¹ See WTO documents WT/COMTD/IF/1 to WT/COMTD/IF/39.

¹² MRD, paragraph 27(2).

¹³ *Ibid.*, paragraph 27(3).

Canadian Government must continue to provide aid to the developing countries. Support for the least developed countries in implementing the WTO Agreements is essential to the participation

of those countries in the Organization, and ultimately to the success and continuation of the WTO.

Recommendation 6

That the Government, assist developing countries, and in particular the least developed countries, to implement their commitments and increase their ability to participate in WTO activities and future negotiations, by contributing human and financial resources:

- toward technological assistance programs for developing countries and the least developed countries, established in the framework of the WTO or in which the WTO participates; and
- toward any other initiative or program with similar objectives.

Monitoring the implementation of the WTO Agreements

As we noted earlier, the ratification of the WTO Agreements by the members is no guarantee that they will adhere to their commitments.

Implementation of the obligations incurred in internal law is the first step that members must take in order to affirm their intention to comply with their obligations.

Earlier, we quoted part of paragraph 8 of the Ministerial Declaration of the second Ministerial Conference, held in Geneva in May 1998, to underline the importance of implementing the WTO Agreements to the future of the Organization. We should now quote the end of that paragraph, to stress the importance that the members place on monitoring implementation:

... When we meet at the Third Session we shall further pursue our evaluation of the implementation of individual agreements and the realization of their objectives. Such evaluation would cover, inter alia, the problems encountered in implementation and the consequent impact on the trade and development prospects of members. We reaffirm our commitment to respect the existing schedules for reviews, negotiations

and other work to which we have already agreed.

This evaluation of implementation, which will be on the agenda at the next Ministerial Conference, is one method of monitoring implementation. Based on that evaluation, the members will be able to pursue their existing policy or adopt a new policy that would better meet their needs or their concerns.

Since the beginning of the WTO's activities, adherence to commitments under the WTO Agreements has occupied a not inconsequential place in the activities of the Organization, which are monitored both through the trade policy review mechanism and the dispute settlement process.

The Trade Policy Review Mechanism (TPRM)

When member countries entered into the WTO Agreements, they agreed on a Trade Policy Review Mechanism (TPRM) for reviewing members' trade policies,¹⁴ following a practice instituted several years earlier under GATT. The objective of the TPRM is to "contribute to improved adherence by all members to rules, disciplines, and commitments made under the multilateral trade agreements and, where

¹⁴ See the text of the *Trade Policy Review Mechanism* in Annex 3 of the Final Act, published in *Results of the multilateral trade negotiations of the Uruguay Round*, Geneva, GATT, 1994.

applicable, the plurilateral trade agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of members". Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual members' trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the agreements or for dispute settlement procedures, or to impose new policy commitments on members.

These reviews are conducted by the Trade Policy Review Body (TPRB), which is composed of all the members. members' policies and practices are subject to periodic review, the length of the interval being a function of the members' share of world trade. The policies of the four members that account for the largest share of world trade are reviewed every two years. The members in question are the European Union, the United States, Japan and Canada.¹⁵ The next sixteen members are reviewed every four years, and the other members' trade policies are reviewed every six years. A longer period may be fixed for the least developed countries.¹⁶

The TPRB review deals with the trade policy and practices of the members who are being evaluated, and is based on two reports, the first by the WTO Secretariat and the second by the member under review. The TPRB then publishes a report of its review. While TPRB meetings are held *in camera*, publication of the minutes of the meetings and the review reports provides interested parties with information about key aspects of the discussions.

In his brief to the Committee, David Runnalls, Acting President of the International Institute for

Sustainable Development, argued that TPRB meetings should be public and that individuals and interest groups should be allowed to make representations. In his view, trade policies affect the public directly, and it would be reasonable for them to be able to present their views on the subject.¹⁷ Mr. Runnalls further noted the educational role of the proceedings and report of the TPRB. Doing this would inform not only the public, but policy-makers, elected representatives, and business people about the national and international consequences of countries' trade policies. In addition, Mr. Runnalls contended that among other things, the TPRB should cover the aspects of members' environmental policies that relate to trade, and the environmental dimension of trade policy.¹⁸

In his testimony before the Committee, Errol Mendes, the Director of the Human Rights Research and Education Centre, also addressed this subject. He explained that the TPRM could play a role in reviewing the relationship between trade policy and labour standards, labour market development, productivity, the environment, and so on. He suggested that Canada should take the initiative to have these dimensions added to the TPRM review elements.

A number of witnesses told the Committee that it is unacceptable that the rules governing trade do not give sufficient consideration to respect for human rights and workers' rights, and environmental protection. On the other hand, there is no consensus as to the form of the connection that should be made between these social concerns and trade. Some say that all these topics should be addressed within the WTO, while others would divide them up among various independent bodies, each dealing with one of these topics, and establish subordinate relationships (a hierarchy) between them. We examine these issues in more detail in Part III.

¹⁵ Canada has been reviewed twice since the WTO began its activities. The TPRB's reports were published in November 1996 and December 1998.

¹⁶ TPRM, article C(ii).

¹⁷ *Submission*, International Institute for Sustainable Development, April 26, 1999.

¹⁸ *Ibid.*, pp. 13–14.

What is important to note at this point is that if the structure of trade regulation were to move in that direction, the mechanism for examining the trade policies of WTO members would have to be adapted to take the trade dimension into account.

As the functioning of the TPRM is to be evaluated in the year 2000, this would be a good opportunity to suggest improvements to the review process. The Committee suggests that the Government examine the possibility of proposing changes to the TPRM in order to introduce new review elements, such as the effects of trade policy on individuals, labour, and the environment.

The work of the WTO Bodies

The work of the WTO bodies is divided among various committees, bodies, and councils and groups and all members may participate in the activities of each of these bodies. There are a number of committees, whose functions include monitoring the application of the agreement under which they were created. For instance, the function of the Committee on Trade in Services is to monitor the application of the General Agreement on Trade in Services, the function of the Committee on Agriculture is to monitor the application of the Agreement on Agriculture, and so on.

These entities, whose function is to monitor the implementation of an agreement, receive the

notices and documents that the members are required to submit under the agreements. They may therefore examine the policy and policy practices of members in the fields of concern to them. These subjects may be discussed at meetings, and those meetings provide an opportunity to attempt to solve problems associated with implementation and adherence to commitments under the WTO Agreements.

Dispute settlement as a measure for monitoring implementation

The Committee discusses the WTO dispute settlement procedure in detail in the second part of this chapter. For the moment, we would note only that the dispute settlement procedure is also a mechanism for reviewing the implementation of commitments under the WTO Agreements. Unlike trade policy review, which is a collective mechanism for monitoring the implementation of commitments, the dispute settlement procedure is an individualized monitoring procedure. A member who claims that another member is not complying with those commitments may use that procedure to have the other member change whatever measures are not in compliance. The large number of dispute settlement cases that are settled at the consultation stage seems to demonstrate that this procedure is an effective mechanism for monitoring the implementation of the WTO Agreements.

Recommendation 7

The Government should ensure that implementation of obligations under the WTO agreements becomes the joint effort indispensable to the WTO's success, and to this end that it:

- **approach members that have not yet fully implemented their obligations and encourage them to do so as quickly as possible;**
 - **participate in the proceedings of the Trade Policy Review Mechanism and voice its opinion on the consistency of members' trade policies with their obligations;**
 - **participate in the activities of the WTO's various bodies and in those forums stress the importance of members' living up to their obligations; and**
 - **use the dispute settlement mechanism to require another member to live up to its commitments, when this is deemed necessary.**
-

Implementation and continuing negotiations

As may be seen from the foregoing, the difficulties the developing countries are facing in implementing their commitments are serious. For a number of those countries, it will be many more years before they are able to achieve an acceptable level of implementation. A number of witnesses said they were afraid that adding to the existing agreements would mean placing an additional burden on developing countries, the effect of which would be to delay even further the time when they would be able to implement their commitments.

Tony Clarke, the Director of the Polaris Institute, provided a clear statement of what these witnesses generally wanted to see, to avoid making the situation worse, by calling for a moratorium on further negotiations. In his view, it is crucial that before undertaking a new round of negotiations we ensure that all WTO members are complying with their commitments and are capable of participating fully in the organization's activities.

Ann Weston, Vice-President of the North-South Institute, also spoke for a number of witnesses in suggesting that there needed to be a review of the social, environmental, and economic consequences of the WTO rules. In her view, that analysis should be done before embarking on a new round of negotiations, since it could be used to determine whether modifications are needed to the existing agreements.¹⁹

Other witnesses called for negotiations to continue. In their view, there are too many points in the agreements that need immediate attention, and the problems that they give rise to can be solved only through a new round of negotiations. They believe that the elimination of customs tariffs should proceed. Problems associated with agriculture should be solved as speedily as possible. The progress made in trade in services

cannot be abandoned in midstream, and greater liberalization calls for further negotiations.

The Committee is not convinced that the developing countries would be better served by imposing a moratorium on further negotiations. In its view, the upcoming negotiations should deal primarily with subjects on which there are already agreements: agriculture, services, market access, intellectual property, and so forth. Care must be taken that any new agreements entered into do not add substantially to the work of implementation. The parties involved in any new negotiations must also have the opportunity to draw attention to the effects of existing and proposed rules on their populations, environments, and economies. They must also be able to argue their points of view, in order to secure changes to the Agreements that will reflect their concerns.

Participation by the provinces in the implementation of international treaties in Canada

In Canada, international treaties must be implemented in accordance with the division of legislative jurisdictions between the federal and provincial governments established in the Constitution of Canada. Where a treaty or an aspect of a treaty relates to an area under provincial jurisdiction, provincial participation is essential to adherence to the commitments under the treaty in question. Beyond a doubt, the best way of securing provincial cooperation is to involve them in the entire process of negotiating international agreements.²⁰

For now, the practice adopted by the Canadian government in this respect seems to meet the needs of the various components of the Canadian federation relatively well. The provinces are kept regularly informed of the progress of negotiations, and some of them are even invited to appoint a representative to the Canadian team, where this is

¹⁹ *Submission*, North-South Institute, p. 7.

²⁰ Michael Hart, *Canada at the Millennium Round – Forging Global Rules for a Global Economy*, p. 22.

possible.²¹ For instance, at the last meetings in the Uruguay Round of negotiations, the governments of Alberta and Quebec were represented on the Canadian team.²² In fact, when the Honourable Harry J. Enns, Manitoba's Minister of Agriculture, appeared before the Committee, the M.P. for Winnipeg–Transcona, Bill Blaikie, suggested that his province should also consider appointing a representative to the Canadian WTO negotiations team.²³

In a detailed brief dealing with the power to enter into treaties within the Canadian federation and the need to have the provinces participate in the next negotiations, Professor David L. Cook of the University of Prince Edward Island suggested that for Canada, the "Millennium Round" will be the "Provincial Round."²⁴ In his view, participation by the provinces is justified by the fact that Canada's trading partners have a number of the provinces' trade practices in their sights, which they consider to be barriers to trade: provincial Crown corporations (liquor stores), provincial contracting, subsidies, technical (non-tariff) barriers, and a series of restrictions relating to professional and commercial services (licences, certification, accreditation). In his view, we have to innovate in terms of how provincial participation can be arranged.

Andrew Reddick, Director of the Public Interest Advocacy Centre, also argued that there should be more consultation with the provinces, on the ground that a number of subjects addressed in trade negotiations are their responsibility within the Canadian federation.²⁵ Nancy Hughes

Anthony, the President of the Canadian Chamber of Commerce, said that it is imperative that the provinces and the federal government express the same views, so that Canada is able to negotiate effectively.²⁶

John Klassen, Director General of Trade Policy, Department of Foreign Affairs and International Trade, observed that when it came to negotiations regarding services, investment and contracting, for example, it was necessary to get the provinces on side. He also acknowledged that it is impossible for the federal government to make commitments that affect the provinces if the provinces are not ready.²⁷

In Canada, some services are under provincial legislative jurisdiction (professional services) while jurisdiction is shared in respect of others (financial services). Trade in services is already on the built-in agenda. In addition, as was noted earlier, a number of other areas which are under provincial jurisdiction could very likely be added to the agenda. From that standpoint, the Committee also acknowledges that the provinces cannot be left out of the upcoming negotiations.

The Committee is aware that the Canadian negotiating team already includes a number of representatives of the various federal departments affected. The Canadian Government should agree with the provinces on a mechanism that would enable them to be kept fully informed of the content of the negotiations and offer them an opportunity to make their views known and to argue their interests within or to the negotiating team.

²¹ On the question of the process of consultation with the provinces, John Klassen, Director General, Trade Policy Branch, Department of Foreign Affairs and International Trade, told the Committee that the representatives of the provinces and the federal government meet every four months. Discussions at those meetings deal with trade policy in general. They may cover issues at the WTO or other trade negotiations under way, as well as dispute settlement procedures. In addition, the provinces have access to a series of documents that are made available to them on an Internet site protected by password. The provinces are also normally consulted on discussion papers on issues relating to trade before they are made public.

²² In his testimony before the Committee, the M.P. for St-Hyacinthe-Bagot, Yvan Loubier, said that he had been involved in the Uruguay Round negotiations as a representative of the Union des producteurs agricoles du Québec.

²³ *Evidence*, Meeting No. 119, April 26, 1999, Winnipeg.

²⁴ *Submission*, Professor David L. Cook, April 25, 1999.

²⁵ *Evidence*, Meeting No. 100, March 16, 1999.

²⁶ *Evidence*, Meeting No. 123, April 28, 1999, Toronto.

²⁷ *Evidence*, Meeting No. 96, March 9, 1999.

Participation by the provinces in the negotiations will offer a better guarantee that they will contribute to implementing international agreements in their spheres of jurisdiction, if it is necessary that they do so.

We are referring specifically to the provinces, as they can be encouraged to play a role in implementing Canada's commitments as part of trade negotiations. However, it is important not to

overlook the impact that trade agreements may have on the other regional governments in Canada, such as the First Nations, the Territories, and local and municipal governments. The Government of Canada should pay particular attention to any comments these regional governments may make about the next round of trade negotiations or the impact that trade agreements may have on their respective communities.

Recommendation 8

The Government should continue its practice of informing and consulting the provinces on issues relating to liberalization of trade under the auspices of the WTO and other international forums that deal with trade, and involve them in the negotiation procedure where it is desirable to do so, to protect their interests in their spheres of jurisdiction, while protecting the interests of the Canadian federation as a whole.

Dispute Settlement

The introduction of an elaborate dispute settlement mechanism within an international organization governing trade was considered as the most significant aspect of the new system, or as the greatest contribution to global economic stability.²⁸ Witnesses also emphasized the introduction of a dispute settlement mechanism that corrected the major defects in the system under the GATT 1947. Although it evolved considerably over the years, the system implemented at that time could easily be paralyzed by a contracting party which refused to agree to the establishment of a panel, to adopt that panel's report or to implement the conclusions of its report. Under the WTO's dispute settlement mechanism, no member can block the dispute settlement process in this way.

The WTO Agreements, which include agreements on trade in goods and services, intellectual property rights, investment and so on, contain an imposing number of rules. To enforce these rules, the WTO's members have agreed to a significant reinforcement and expansion of the rules and procedures governing the settlement of disputes.

Whereas the former dispute settlement mechanism introduced under the GATT 1947 left considerable room for negotiation, the new system is essentially a rules-based system. Regardless of their economic or political power, all members are equal as regards compliance with their obligations and their ability to compel other members to comply with theirs.

When they sign a treaty, all parties agree to the principles established thereunder, but subsequently do not all show the same haste to comply with or implement those principles. Compliance with an international treaty is the greatest challenge facing the signatories, which must shift from theoretical approval to action.

As seen above, one of the means members use to implement the WTO Agreements is to ensure that their trade legislation and regulations are consistent with these undertakings. To implement the agreements, a number of members have had to amend their legislation and regulations or adopt new ones.

In view of the number of trade measures introduced by a single member, it is virtually impossible to ensure that all these measures are

²⁸ Sylvia Ostry, *Evidence*, Meeting No. 122, April 27, 1999, Toronto. Gilbert Winham, *Submission*.

"A number of recent disputes adjudicated before the WTO are bound to have an impact on new negotiations including importantly the agriculture negotiations. It is difficult to predict exactly how panel findings or appellate body decisions will impact, but you can be sure that negotiators will be studying such outcomes as they develop their negotiating approaches. Indeed, certain disputes may have impacts which go well beyond the particular area in dispute. For instance the banana dispute is instructive because much of it turned on an interpretation of the services agreement and the distribution issue."

John Weekes, Ambassador of Canada to the
World Trade Organization
Tuesday, May 11, 1999

consistent with all undertakings under the WTO Agreements. As there are 134 WTO members, verifying compliance with all measures by all members is an unthinkable task. The dispute settlement mechanism is thus a way of verifying member compliance on an individual basis.

Under the WTO framework, when one member disputes a measure adopted by another on the ground that it is not consistent with its undertakings under the WTO Agreements, the dispute must be settled in accordance with the rules and procedures established by the Understanding on Agreements and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU). For a description of the dispute settlement rules and procedures and their use, see Appendix 3B to this Chapter.

Criticism and Problems Encountered

Although general feeling about the WTO's dispute settlement mechanism is quite positive,²⁹ the criticism we heard focussed mainly on certain aspects of the procedure or on the system's effects. We cite the main criticisms below.

Sovereignty Undermined

The dispute settlement system is perceived by some as a supranational authority which imposes

an economic code of conduct on members and directly undermines their sovereignty.

The loss of sovereignty does not result from the dispute settlement system, but rather from the fact that a state agrees to become a party to an international agreement. From the moment a treaty imposes obligations on the states that ratify it, restrictions are placed on the actions of those states in the field covered by the treaty. This limitation on a state's ability to intervene is effectively a limitation on the exercise of its sovereignty.³⁰

The Convention on the Prohibition against Antipersonnel Mines is a good example of this kind of limitation. Briefly stated, the states that ratify this treaty cannot produce, store or use these kinds of mines or permit their production, storage or utilization within their jurisdiction. The imposition of such restrictions against antipersonnel mines is an obvious limit to the sovereignty of these states. And yet, very few people dispute the fact that the treaty is a good one or that its objectives are wholly valid.

In the case of trade treaties, criticisms about limitations on the sovereignty of states become very emotional, an entirely understandable reaction. Trade treaties very often have the effect of limiting governments' means of action in the national economy. Customs tariffs are reduced or eliminated, restrictions are imposed on the granting of subsidies and so on. These measures,

²⁹ Serge Fréchette, *Evidence*, Meeting No. 101, March 16, 1999, Donald McRae, *Evidence*, Meeting No. 101, March 16, 1999, Vilaysoun Loungnarath, *Evidence*, Meeting No. 110, March 25, 1999.

³⁰ Steven Clarkson, *Evidence*, Meeting No. 122, April 27, 1999, Toronto.

individually or collectively, have, among other things, the effect of opening a state's markets to foreign competition. This opening of markets, which began well before the trade liberalization agreements were signed, has effects on the industrial structure and, more generally, on the national economies of states as a whole.

However, one must also look at the other side of the coin. In signing trade liberalization agreements, Canada is not the only country that has agreed to open its market to foreign competition. Its trading partners have also made the same commitments. As the Canadian economy is strongly oriented towards exports, Canada has everything to gain from greater openness in the markets of its main trading partners. Our healthy trade surplus in recent years suggests that Canada's open trade policy has worked well, but the Government must nevertheless remain vigilant.

In becoming a party to a treaty, Canada bargains that the restrictions it imposes on itself will be offset by the benefits the Canadian public as a whole should be able to derive. Panel and Appellate Body rulings are usually a reminder that members have not fulfilled some of their obligations. To comply with their undertakings, these members must then repeal or change the measures deemed to be inconsistent. In the minds of some, the dispute settlement mechanism is responsible for the loss of sovereignty because it usually results in a decision which requires the member concerned to amend a measure it has adopted or amend an aspect of its trade policy (or cultural policy in the case of split-run periodicals). The result can be to attack the messenger rather than the message.

As mentioned above, in becoming a party to a treaty, a state agrees to limit its means of intervention in the hope of deriving benefits that

will offset the resulting loss of sovereignty. In the case of the WTO, 134 members have thus agreed to limit their sovereignty in the hope that overall trade liberalization will be of net benefit to their citizens.

Scientific Justification of Standards

Another illustration of the effect of treaties on the national policies is the entire issue of the scientific basis of standards. The general principle is that the sanitary and phytosanitary standards that members adopt must have a scientific justification. If a member decides to prohibit a consumer good (a food or other type of product), the grounds for that prohibition must be scientifically founded.

A number of disputes reveal the legal rigor with which these principles regarding scientific basis have been applied by the panels and the Appellate Body. From the moment there is any doubt as to the scientific justification of a measure, the panels and Appellate Body reject it if it cannot be justified by another provision of the agreements.

Some thus criticize the fact that standards adopted to protect the environment have been set aside by the panels and Appellate Body on the ground that they are not scientifically justified, whereas these measures are the subject of a broad consensus or are important aspects of a government's environmental policy.³¹

The case of growth hormones administered to beef cattle, a very current issue, could force WTO members to review the entire issue of the scientific basis of standards. Although the measures prohibiting imports of beef and beef cattle which have received growth hormones (hormone-fed beef) have been ruled inconsistent by the Appellate Body, the European Union recently announced it did not intend to amend its regulations. As a result, it has exposed itself to

³¹ See the briefs by West Coast Environmental Law and the Canadian Environmental Law Association. The cases usually cited are: *United States – Standards for Reformulated and Conventional Gasoline* (WT/DS2), *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (WT/DS58) and *EC – Measures Concerning Meat and Meat Products (Hormones)* (WT/DS48).

sanctions by the United States and Canada, the complainant parties in this case.

The European Union bases its refusal on the fact that recent scientific studies tend to establish risks associated with the consumption of hormone-fed beef.³² It has thus become the first member of the WTO to prefer sanctions to submitting to a panel or Appellate Body ruling. This is a political choice which could have serious consequences for the system's credibility and even for the WTO's future. The Government should monitor this case closely and assess its consequences.

Conflict of Interpretation between GATT and GATS

Professor Ivan Bernier of the Laval University Faculty of Law underscored the problem of overlaps in the implementation of agreements, among others the GATT and GATS, and the potential conflict that may result.³³ Two decisions have drawn particular attention to these difficulties: bananas and split-run periodicals.

In the periodicals case, the Canadian Government alleged that the tax imposed (one of the disputed measures) was a tax on advertising services and that, consequently, it should be analyzed under GATS. As Canada has made no undertaking in respect of advertising services under GATS, it contended it had no obligation to provide national treatment for such services and that the measure should be maintained. Neither the panel nor the Appellate Body accepted this argument. On the contrary, both held that the tax was aimed at periodicals (goods) and that the measure, which is subject to the GATT 1994, was discriminatory and therefore inconsistent with Canada's obligations.³⁴

On this apparent conflict between the GATT 1994 and GATS, the panel held as follows:

Overlaps between the subject matter of disciplines in GATT 1994 and in GATS are inevitable, and will further increase with the progress of technology and the globalization of economic activities. We do not consider that such overlaps will undermine the coherence of the WTO system.³⁵

In the bananas case, the same question of exclusive or joint application of the GATT 1994 and GATS was raised. The Appellate Body made the following comments:

The second issue is whether the GATS and the GATT 1994 are mutually exclusive agreements. The GATS was not intended to deal with the same subject matter as the GATT 1994. The GATS was intended to deal with a subject matter not covered by the GATT 1994, that is, with trade in services. Thus, the GATS applies to the supply of services. It provides, inter alia, for both MFN treatment and national treatment for services and service suppliers. Given the respective scope of application of the two agreements, they may or may not overlap, depending on the nature of the measures at issue. Certain measures could be found to fall exclusively within the scope of the GATT 1994, when they affect trade in goods as goods. Certain measures could be found to fall exclusively within the scope of the GATS, when they affect the supply of services as services. There is yet a third category of measures that could be found to fall within the scope of both the GATT 1994 and the GATS. These are measures that involve a service relating to a particular good or a service supplied in

³² It should also be mentioned that a large portion of the European population is opposed to withdrawing the prohibition on hormone-fed beef. European authorities very likely took this opinion into account before deciding to maintain their regulations prohibiting imports of such beef.

³³ *Evidence*, Meeting No. 104, March 22, 1999.

³⁴ *Canada – Certain Measures Concerning Periodicals – Panel Report*, WT/DS31/R, Geneva, WTO, March 14, 1997 and *Canada – Certain Measures Concerning Periodicals – Appellate Body Report*, WT/DS31/AB/R, Geneva, WTO, June 30, 1997.

³⁵ *Canada – Certain Measures Concerning Periodicals – Panel Report*, WT/DS31/R, Geneva, WTO, March 14, 1997, paragraph 5.18.

conjunction with a particular good. In all such cases in this third category, the measure in question could be scrutinized under both the GATT 1994 and the GATS. However, while the same measure could be scrutinized under both agreements, the specific aspects of that measure examined under each agreement could be different. Under the GATT 1994, the focus is on how the measure affects the goods involved. Under the GATS, the focus is on how the measure affects the supply of the service or the service suppliers involved. Whether a certain measure affecting the supply of a service related to a particular good is scrutinized under the GATT 1994 or

the GATS, or both, is a matter that can only be determined on a case-by-case basis. This was also our conclusion in the Appellate Body Report in Canada Periodicals.³⁶

Like other states, Canada may be facing this kind of overlap again in the implementation of the WTO Agreements. When a government adopts a measure applicable to services (or a particular service area), it is entirely justified in expecting that this measure will be considered as such by the organizations that will eventually have to consider it. If this principle does not hold, this could undermine the predictability of the international trade rules and consequently trust in the system.

Recommendation 9

The Government should consider the issue of overlap in the implementation of WTO Agreements to determine whether interpretation rules should be proposed to address this overlap.

Nor should we neglect the issue raised by conflicts of interpretation among the WTO Agreements and more generally among the various international treaties. It will quite often be difficult to determine exactly which provision of an agreement will apply to a particular measure. The bananas and periodicals issues have highlighted these potential conflicts.

The challenge is already a big one in a single organization which implements trade agreements based on the same principles. The challenge may be greater if, to these agreements, are added social and environmental standards which could well fall within another organization's jurisdiction. If WTO members decide to submit to such standards, they will also have to find a mechanism for resolving potential conflicts in the implementation of the various legal instruments.

Transparency and Participation by Third Parties

The same criticism that has been voiced about the transparency of WTO activities, which the Committee addressed in Chapter 1, has also been levelled at the dispute settlement mechanism. The activities of the panels and the Appellate Body are not open to the public and the claims of the parties are not made public. Non-member third parties cannot take part in the proceedings.

Trade disputes have traditionally been handled confidentially and even in secret. The fear has always been that privileged trade information might be made public and harm the owner of that information. The best way to ensure that such information is protected is to wrap in confidentiality and secrecy disputes which might disclose that information and restrict the parties to the disputes.³⁷

³⁶ EC – Regime for the Importation, Sale and Distribution of Bananas – Appellate Body Report, WT/DS27/AB/R, Geneva, WTO, September 9, 1997, paragraph 221.

³⁷ The panels and the Appellate Body may take any measures they deem appropriate to protect privileged trade information. See Serge Fréchette, *Evidence*, Meeting No. 101, March 16, 1999.

Similarly, conflicts between states, regardless of whether they concern trade matters, are also traditionally discussed *in camera*. For these two reasons (trade disputes and disputes between states), when the time came to establish a mechanism for the settlement of trade disputes between states, authorities quite naturally established an exclusive mechanism shrouded in secrecy. The question that arises today is whether it is still appropriate to maintain this type of system. Opinion is divided on this question.

Alleging that trade agreements have effects on the general public, the environment and the economy in general, witnesses told us it was necessary to involve competent organizations into the system, which would make it possible to defend the various interests.³⁸ For these witnesses, the dispute settlement procedures should be amended accordingly.

Other witnesses said it would not be appropriate to expand participation in the dispute settlement procedures. In their minds, it is entirely natural for participation in the procedures to be restricted to members since we are dealing with international treaties and that only the parties to those treaties should be authorized to take part in disputes over their implementation.³⁹ Sylvia Ostry said she feared the idea of opening the dispute settlement procedure to participation by non-member third parties. In her view, if environmental groups were authorized to intervene, businesses, unions, consumer groups and even private law firms would demand the same access and the existing

system would be transformed into a system based on confrontation and contradiction.⁴⁰

Professor Donald McRae of the University of Ottawa expressed the view that the issue of the defence of special interests should be resolved at the national level. In this sense, Canada should introduce a mechanism whereby a person (individual, organization or corporation) whose interests are affected by the trade policies of another country could submit his case to the government and request recourse to the dispute settlement mechanism.⁴¹

For others, who hold the middle ground, the Agreements are international treaties and members should be the principal parties in dispute settlement proceedings. They also mentioned that it would be important to make certain changes to the procedures to enable interested persons and organizations to express their point of view. The form this third party participation would take remains to be determined.

Witnesses mentioned that the transparency of dispute settlement work could be improved if the briefs submitted by the parties and the arguments before the panels and the Appellate Body were made public. However, care must be taken to ensure that privileged trade information is protected.⁴²

The Committee acknowledges that the issue of participation by non-member third parties in dispute settlement procedures requires special attention.

Recommendation 10

The Government should carefully examine the issue of participation by non-member third parties in WTO dispute settlement procedures and raise this issue at the right time before the WTO for its review.

³⁸ *Submission*, World Federalists of Canada.

³⁹ Lawrence Herman, *Evidence*, Meeting No. 93, March 2, 1999.

⁴⁰ Sylvia Ostry, *Evidence*, Meeting No. 122, April 27, 1999, Toronto.

⁴¹ *Evidence*, Meeting No. 101, March 16, 1999. Serge Fréchette stated that this national mechanism already exists in Canada.

⁴² Howard Mann, *Evidence*, Meeting No. 101, March 16, 1999.

Implementation of Panel and Appellate Body Rulings

When panel or Appellate Body decisions have been adopted by the Dispute Settlement Body (DSB), the member concerned must repeal or amend the measure deemed to be inconsistent in order to comply with the decision. The member has a period of time not exceeding 15 months in order to do so.

Witnesses explained to the Committee that this stage in the dispute settlement procedure was subject to the most criticism. These negative comments are of two kinds, some concerning procedural matters, others the merits of each case.

If the member concerned by a decision adopts a new measure to replace the measure ruled inconsistent, that new measure may be the subject of a new dispute between the parties. The panel that initially heard the case may be called upon to rule on the new measure. These new procedures have the effect of delaying the implementation of the decision. In theory, this process could be repeated *ad infinitum* and prevent compliance with the decision. WTO members should therefore consider the issue in an attempt to find a solution to this situation.

Furthermore, the provision of the DSU which permits the implementation of dispute settlement procedures to dispute the new measure does not

state clearly whether the decision the panel makes can be subject to an appeal before the Appellate Body.⁴³ If this were the case, it would have the effect of further delaying the decision's implementation. The wording of paragraph 21(5) of the DSU is so unclear that it would be possible to defend both the position that such an appeal is authorized and that an appeal is prohibited.⁴⁴

Paragraph 22(2) of the DSU provides that a member benefiting from a decision may seek permission from the DSB to suspend concessions or other benefits. This request may only be made after a period of 20 days following the expiration of the time period granted to implement the decision, provided the parties have held consultations on the issue of compensation within that 20-day period.

This provision appears to conflict with the previously cited provision which permits new procedures where the member concerned has adopted a new measure whose consistence is in dispute.⁴⁵ A situation may then arise in which a measure is disputed at the same time a request is made for compensation. It would be illogical to suspend concessions or other benefits where the matter has not been finally decided if the member concerned meets its obligations. It would be important to clarify either or both of these provisions to solve the problem of potential conflict between them.

Recommendation 11

The Government should consider the issue of potential conflict between paragraphs 21(5) and 22(2) of the Dispute Settlement Understanding and submit its recommendations to the WTO at the appropriate time.

Interim Report Card and Canadian Experience

As Minister Marchi stated to the Committee, a rules-based trading system has been beneficial to

Canada. As he explained, rules mean predictability and fairness and prevent Canadians from being excluded through the application of discriminatory standards.⁴⁶

⁴³ DSU, paragraph 21(5).

⁴⁴ Donald McRae, *Evidence*, Meeting No. 101, March 16, 1999.

⁴⁵ Gilbert Winham, *Submission*.

⁴⁶ *Evidence*, Meeting No. 88, February 9, 1999.

Other witnesses also mentioned that Canada's participation in the dispute settlement mechanism has been positive. This assessment must not reflect solely the cases in which Canada has lost, but also those which were decided to its advantage.⁴⁷

Donald McRae pointed out that experience to date with the dispute settlement mechanism shows that complainant members more often win their case than not. In his view, the situation should continue until the members bring their legislation up to date to make it consistent with the degree of liberalization required by the WTO.⁴⁸ The implementation of undertakings arising from the WTO Agreements is continuing and the dispute settlement mechanism is an effective way to monitor that implementation.

A growing number of small and medium-size Canadian businesses are achieving success in

foreign markets. To maintain and increase the number of success stories, it is important that open markets be based on clear and predictable rules. The Government must ensure that the trade rules adopted by Canada's trading partners are consistent with the WTO Agreements and other trade agreements to which it is a party. It should take the necessary measures, including use of the dispute settlement mechanism, to ensure compliance.

All things considered, as Serge Fréchette told the Committee, at less than five years old, the dispute settlement mechanism is still young and must be allowed the time to acquire experience.⁴⁹ The Committee agrees with this comment and concludes that it is too soon to prepare a final report card on the dispute settlement mechanism. The Canadian Government will have to continue monitoring this issue closely.

⁴⁷ Peter Clark, *Evidence*, Meeting No. 95, March 4, 1999. Gilbert Winham, *Evidence*, Meeting No. 107, March 24, 1999, Halifax.

⁴⁸ *Evidence*, Meeting No. 101, March 16, 1999.

⁴⁹ Serge Fréchette, *Evidence*, Meeting No. 101, March 16, 1999.

APPENDIX 3A – STRUCTURE OF WTO AGREEMENTS AND SCOPE OF OBLIGATIONS

Structure of WTO Agreements

At the conclusion of the Uruguay Round in Marrakesh on April 15, 1994, the members of the Trade Negotiations Committee signed two international treaties, the *Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations* (Final Act) and the *Agreement Establishing the World Trade Organization* (Agreement on the WTO).¹

The Final Act provides that the members of the WTO shall have their competent authorities approve the Agreement on the WTO and its annexes as well as the various departmental declarations and decisions. The Final Act states that it is desirable that the Agreement on the WTO be accepted by all participants in the negotiations of the Uruguay Round so that it can enter into effect on January 1, 1995. The representatives of the participants in the negotiations met at the end of 1994 to confirm that the WTO Agreements would enter into effect on that date as planned.²

The Agreement on the WTO formally establishes a new international organization, the World Trade Organization (WTO). As agreed among the parties, “the WTO shall provide the common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.”³

The Agreement on the WTO provides that the agreements and legal instruments contained in the first three Annexes form an integral part of the Agreement and are integral parts thereof for all members.⁴ Accordingly, the members did not have to sign each of these agreements to become parties thereto. As for the multilateral agreements of Annex 4, they will be binding only on members who have accepted them. The Agreement on the WTO also describes the functions, structure, and status of the WTO, the decision-making process, the amendment procedure, and the accession and withdrawal process.

The agreements of Annex 1A concern trade in goods. They are the *General Agreement on Tariffs and Trade 1994* (General Agreement 1994 or GATT 1994), which extends the *General Agreement on Tariffs and Trade 1947* (General Agreement 1947 or GATT 1947) as amended on the effective date of the Agreement on the WTO, the *Agreement on Agriculture*, *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPM Agreement), *Agreement on Textiles and Clothing* (Textiles Agreement), *Agreement on Technical Barriers to Trade* (TBT Agreement), *Agreement on Trade-Related Investment Measures* (TIM Agreement), *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Dumping Agreement),

¹ The members of the Trade Negotiations Committee are the contracting parties of the GATT 1947 and the other participants in the process of acceding to the GATT 1947. Article 5 of the Final Act moreover states that, before accepting the Agreement on the WTO, they should complete negotiations for their accession to the GATT 1947 and become contracting parties thereto.

² Final Act, Article 3.

³ Agreement on the WTO, Article 2.

⁴ All the agreements are known collectively as the “WTO Agreements” and are published in the *Results of the Multilateral Trade Negotiations of the Uruguay Round*, Geneva, GATT, 1994.

Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Value Agreement), Agreement on Preshipment Inspection, Agreement on Rules of Origin, Agreement on Import Licensing Procedures, Agreement on Subsidies and Countervailing Measures (SCM Agreement) and Agreement on Safeguards.

Annex 1B includes the *General Agreement on Trade in Services (GATS)* and its annexes.

Annex 1C contains the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*. Annex 2 is the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, and Annex 3 contains the *Trade Policy Review Mechanism (TPRM)*.

Lastly, Annex 4 contains the four plurilateral trade agreements: *Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement* and *International Bovine Meat Agreement*. As noted above, these agreements are binding only on the members who have become parties thereto. Canada moreover has never become a party to the *International Dairy Agreement*. In addition, members under this last agreement terminated it on January 1, 1998 because it no longer had any reason to exist.⁵

The WTO is also a permanent forum for discussion and negotiation. This role has enabled WTO members to enter into supplementary agreements. In accordance with the *Memorandum of Understanding on Financial Services Undertakings*, the members agreed on protocols for the liberalization of trade in financial services. The members have also signed an agreement on basic telecommunications and another on accounting services, to name only two.

Scope of Obligations

As may be seen, the subjects covered by the WTO Agreements are numerous and varied. The Agreements are in fact the result of a negotiation process that has taken place over more than 50 years, since the negotiations leading to the signing of the GATT 1947 were initiated.

The signing of international trade liberalization agreements can be mainly justified by the need to provide a framework for the adoption by governments of measures designed to protect various sectors of the domestic industry or, more globally, their national economy. Some of these measures are wholly justified, whereas others are mere barriers to trade in goods and services. It is these latter measures which are covered by trade liberalization agreements such as the WTO Agreements.

For centuries, the economic policies of states have ranged from protectionism to greater market openness, although the former has dominated to a large degree. With the recent advancements in transportation and communications, trade in foreign markets has developed considerably. However, this trade liberalization has come up against numerous restrictive measures limiting access to foreign markets. These measures take various forms. Customs tariffs have long constituted the most significant form of restrictive measures and are also a major source of government revenues. In addition, a series of technical, so-called non-tariff measures, also constitute barriers limiting access to foreign markets.

It has always been clear that trade liberalization can only come about through the elimination of restrictive tariff and non-tariff measures. Businesses which attempted to break into foreign markets and who were faced with these barriers have put pressure on their own governments to intervene with foreign states to

⁵ *Suppression of the International Dairy Agreement of Annex 4 of the Agreement on the OMC*, Decision of December 19, 1997, document WT/1/251, Geneva, WTO, December 17, 1997.

have the latter eliminate measures restricting access to their markets.

However, no governments were interested in unilaterally eliminating barriers to their markets. It became obvious that the only way to achieve this objective was to enter into agreements whereby the trading partners agreed to eliminate barriers to access to their markets on a reciprocal basis. Accordingly, a number of trade liberalization agreements have been signed since the turn of the century. Before the WTO, the most important of those agreements, on the basis of the number of parties thereto, was the *General Agreement on Tariffs and Trade 1947* (GATT 1947), which set the liberalization rules for trade in goods. In addition, countries in various parts of the world have signed regional agreements. In the 1950s, six European countries founded the European Community, which over the years has changed and become the European Union, with 15 members today. In addition to being a contracting party to the GATT 1947, Canada has entered into agreements with some of its main trading partners: the *Canada–United States Free Trade Agreement* (FTA), *North American Free Trade Agreement* (NAFTA) with the United States and Mexico, *Canada–Chili Free Trade Agreement* and *Canada–Israel Free Trade Agreement*.

The contracting parties to the GATT 1947, which only concerned trade in goods, added to that agreement over successive negotiations various supplementary agreements, again linked to trade in goods. Thus, the trade negotiations of the Tokyo Round resulted in 1979 in the Anti-Dumping Code⁶ and the Subsidies Code⁷, as well as agreements on, among other things,

government contracts, customs valuation, and import licences. These various agreements were incorporated more or less completely in the various WTO Agreements on trade in goods, that is to say, the Agreements listed in Annex 1A of the *Agreement Establishing the World Trade Organization*.

The prodigious growth in trade in services in recent decades made it desirable to establish an international agreement in this area. And the negotiations of the Uruguay Round helped remedy the situation by introducing the *General Agreement on Trade in Services* (GATS).⁸

Despite the work done by the World Intellectual Property Organization (WIPO), the entire intellectual property sector suffered from the absence of a mechanism compelling implementation of the rules of the agreements signed under its auspices and settling disputes between the parties to those agreements. The purpose of the TRIPS Agreement is to correct these deficiencies, at least in part.⁹

Lastly, under the regime of the GATT 1947, the settlement of disputes between contracting parties suffered one major handicap: a single party could block the adoption of a panel report. The main objective in adopting the DSU was to address criticisms of the dispute settlement process under the GATT 1947. In addition, the DSU applies to all WTO Agreements. In the second part of this Chapter, we will see whether these objectives have been achieved.¹⁰

Each of the WTO Agreements states the obligations of the members in the field which it concerns. For example, the *Agreement on Import Licensing Procedures* established the members' commitments as regards the establishment of an

⁶ *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, published in *Texts of the Agreements of the Tokyo Round*, Geneva, GATT, 1986, p. 139.

⁷ *Agreement on the Interpretation and Implementation of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade*, published in *Texts of the Agreements of the Tokyo Round*, Geneva, GATT, 1986, p. 55.

⁸ See the Chapter on services for a description of the GATS.

⁹ See the Chapter on intellectual property for details.

¹⁰ See the second part of this Chapter on dispute settlement. See also the Chapter on intellectual property.

administrative body responsible for issuing import licences, classes of licences (automatic, non-automatic), licensing procedures, requirement of fair notice and review of implementation, and operation of the Agreement.

As may be seen, WTO members have a considerable number of obligations as a result of the many agreements, and their scope and complexity. The main principles of trade liberalization remain the same from one agreement to the next. Members should

eliminate barriers to trade in goods and services. Tariff measures should be eliminated. Import quotas should be transformed into tariff quotas, which should subsequently be eliminated as well. Non-tariff barriers should be restricted or limited. Each member should grant the same treatment to foreign suppliers and goods as it grants to its own suppliers and goods (national treatment). Apart from certain clearly identified exceptions, each member must grant all members the preferential treatment it grants itself (most-favoured-nation treatment or MFN treatment).

APPENDIX 3B – DESCRIPTION AND USE OF THE DISPUTE SETTLEMENT PROCEDURE

The Dispute Settlement Body (DSB), constituted under the DSU and composed of all WTO members, is responsible for supervising the implementation of the DSU. Members submit their requests and opinions on the settlement of disputes to the DSB. “Accordingly, the DSB [has] the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the ... agreements.”¹

The dispute settlement procedure may be divided into six stages: consultations, establishment of a panel, panel review, Appellate Body review, adoption of the report, and implementation of rulings. We shall now take a brief look at each of these stages.

Consultations

A member that alleges another member is not complying with its obligations submits a written request for consultations and forwards a copy of that request to the DSB and to the appropriate councils and committees.² The request contains reasons and an indication of the measures at issue and the legal basis of the complaint. The purpose of the consultations is to force the parties to speak with each other and agree on a solution to the dispute.

Establishment of a Panel

The DSU states that, if consultations do not result in a settlement of the dispute within 60 days following the date of receipt of the request

for consultations, the complainant party may request the establishment of a panel, which normally consists of three members.³ In urgent cases, where perishable goods are involved, for example, the time period is reduced to 20 days. The request for establishment of the panel must be made in writing and indicate the measures at issue and contain a brief description of the legal basis of the complaint.

The DSB is required to establish a panel no later than the DSB meeting following the one when the request first appears on the agenda. After the panel is established, the parties must then agree on its membership. If there is no agreement as to the composition of the panel, the Director General, after consulting the Chairman of the DSB or the chairmen of the competent committees and councils, determines its composition. At the same time as it establishes the panel, the DSB also determines its terms of reference.

Panel Review

The panel considers the parties' claims, holds hearings, reviews the complaint, and issues a ruling. The conduct of the procedures before the panel is determined by the DSU and should normally be completed in six months. The panels' working procedures are outlined in Appendix 3 of the DSU. Briefly stated, the main features of these procedures are as follows:

- Panel meetings are private. Only the parties to the dispute and interested third parties may be invited to them.
- Panel proceedings and documents remain confidential.

¹ DSU, paragraph 2(1).

² The appropriate councils and committees are the bodies of the WTO responsible for implementing the agreements concerned in the complaint.

³ If the parties to the dispute agree, the number of panel members may be increased to five.

Part One

CANADIAN INTERESTS IN BUILDING A BETTER GLOBAL TRADE REGIME

- Before the panel's first meeting, the parties shall make written submissions to it on the facts of the case and their arguments.
- The panel shall hear the parties and invite third parties to be heard.
- The written submissions of a party are transmitted to the other parties.

The panel drafts a report stating the facts of the case, the applicability of the provisions, and the reasons for their findings and recommendations. If a settlement has been reached between the parties, the panel's report briefly states the case and reports that a solution has been reached.

Appeal to the Appellate Body

Although panels are *ad hoc* bodies, the Appellate Body (AB) is a permanent body composed of seven persons. When it hears a case, the Appellate Body is composed of only three of its members. Those who sit on a case are determined by rotation based on the Appellate Body's working procedures. The persons who sit on the Appellate Body are appointed to four-year terms, which may be renewed only once. Other rules are established to ensure the impartiality of members.

A party to a dispute may appeal a panel decision within 60 days after the report is distributed to the members. The appeal may concern only points of law. The AB's work is also confidential. The AB must normally complete its review of a case and produce its reports within 60 days. If it finds that a measure is inconsistent with an agreement, the Appellate Body, like the panel, recommends that the member concerned bring the measure into conformity. It may also suggest ways in which the member concerned could implement the recommendations.

Adoption of Report

Where a panel decision is not appealed, the DSB should adopt its report within 60 days of its being distributed to the members. If the panel

decision is appealed, the DSB will then adopt the AB decision and that of the panel (as amended, if necessary) within 30 days of the distribution of the AB report to the members. The DSU provides that the AB report shall be accepted unconditionally by the parties to the dispute.

Surveillance of Implementation of Rulings

The DSU provides that, in the interests of all members and so that the dispute can be effectively resolved, it is essential to comply with the DSB's recommendations and rulings as soon as possible. The DSB is, moreover, responsible for surveillance of implementation.

At a DSB meeting, which is required to be held within 30 days of adoption of the panel or AB report, the member concerned must inform the DSB in writing of its intentions as regards implementation of the DSB's recommendations and rulings. If it cannot comply immediately, the member shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

- the period of time proposed by the member concerned and approved by the DSB;
- a period of time mutually agreed upon by the parties to the dispute, or
- a period of time determined through binding arbitration which should not exceed 15 months from the date of the adoption of the report by the DSB.

After a period of six months following the date on which the reasonable time period was set, and until implementation is complete, the subject will remain on the agenda of the DSB's meetings and the member concerned shall provide a status report on implementation at least 10 days prior to each of those meetings.

Any dispute that arises over the measures taken for the purpose of implementation is submitted to the DSB's dispute settlement procedures, as is done in the initial recourse to the DSB. If a

panel must be established to rule on the dispute as it pertains to implementation, the initial panel will be asked to rule where possible. The panel has 90 days from the date on which the matter was referred to it to produce its report.⁴

If the recommendations and decisions are not implemented within the specified time period, the member that is to benefit from them may demand compensation and suspend concessions or other obligations. If the parties to the dispute are unable to agree on the amount of compensation within 20 days after the implementation deadline, a party may request authorization from the DSB to withhold the implementation of concessions or other obligations from the member affected by the decisions.

The suspension of concessions or other obligations should be, to the extent possible, in the same sector as that in which a violation or other nullification or impairment was found. The extent to which the DSB authorizes the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment. The DSB may authorize the suspension of concessions or other benefits within 30 days after expiry of the implementation deadline.

Any dispute about the level of suspension or the sector in which it is to be applied is referred to arbitration by the original panel, if it is available. If it is not, the Director General will appoint an arbitrator. Arbitration shall be completed within 60 days after expiry of the implementation deadline. The parties concerned accept the arbitrator's decision as final. The DSB must be informed promptly of the arbitrator's decision

and authorize the suspension of concessions or other benefits in a manner consistent with that decision. The suspension of concessions or other obligations is temporary and only applied until the measure found to be inconsistent has been removed, or the member concerned has found a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached.

Use of the Dispute Settlement Procedure since the Establishment of WTO (Participation of Developing Countries and the Least Developed Countries in the Dispute Settlement Procedure)

WTO members have made use of the dispute settlement mechanism a number of times since January 1, 1995. Compared to the use made of the dispute settlement procedure under the GATT 1947, one could say this use has been intensive.

As of early May 1999, 171 requests for consultations had been filed with the DSB, representing 131 separate cases. Developing countries had filed complaints in 29 cases, to which must be added four cases involving complaints by developing and developed countries. Of these 33 complaints, 23 were directed against developed countries and 10 against developing countries.⁵

All members have the same rights and obligations. The considerable number of complaints filed against the United States and the European Union are proof of this. In many cases, these complaints were filed by developing countries, which, moreover, won their cases.

⁴ DSU, paragraph 21(5).

⁵ *Overview of the State-of-Play of WTO Disputes*, Geneva, WTO, May 7, 1999.



Part Two

Principal Sectors of Canadian Negotiating Interest

- Chapter 4: Agriculture and Agri-Food Issues
- Chapter 5: Ongoing Market Access Issues
- Appendix 5A: Summary of Non-Tariff Barrier Uruguay Round Agreements
- Chapter 6: Services Issues
- Chapter 7: Cultural Issues
- Chapter 8: Emerging Technology-Driven Issues
- Chapter 9: Intellectual Property Rights in the Context of the WTO
- Chapter 10: Investment and Competition Policy Issues

AGRICULTURE AND AGRI-FOOD ISSUES

"What Canadians are Saying"

...instead of Canada going into this next trade round and volunteering things too early, we need to very early on establish goals and objectives for Canadian agriculture. Then what we have to do is build our trade policy around it. We have to build trade policy in such a way that it gives us the tools to achieve the goals and objectives we have in all the commodities we have in Canada.

Robert Friesen, Canadian Federation of Agriculture
Thursday, March 11, 1999

The next round of negotiations must allow for more predictability in terms of the liberalization of agricultural commercial exchanges. To reach that goal, we need specific requirements in terms of the gradual elimination of obstacles and the elimination of products' global approach, in other words the establishment of tariff quotas, as well as other measures that would allow the liberalization process to become more transparent and more objective.

Eduard Asnong, Canadian Pork Council,
Canadian Alliance of Agri-Food Exporters
Thursday, March 11, 1999

Farm producers of oilseeds and members of the Canadian Oilseed Processors Association (COPA) are unanimous in their position that the level playing field zero-for-zero trade policy in oilseeds continues to be an objective of Canada's trade negotiators in the WTO '99 Round.

Robert Broeska, Canadian Oilseed Processors Association
Monday, April 26, 1999

...the Alliance would see it as problematic for Canada's overall WTO negotiating position to attempt, once again, to defend supply management to the utmost and to enter the WTO round on the defensive, with what appears to be a shrinking group of allies. We are in danger of being isolated in the Cairns Group and the WTO generally. We therefore think it essential for Canada to have much more flexibility in its position on supply management as we enter the Round.

Jayson Myers, Alliance of Manufacturers & Exporters/Canada
Friday, April 30, 1999

...I think that an agricultural support policy is quite justified. However, we are not talking about iron-clad support. We understand that it may be necessary to compromise at the present time, but we must guarantee protection for our agriculture.

Daniel Germain, Association coopérative d'économie familiale de Québec
Monday, March 22, 1999 Québec City

During the next round of negotiations, we would also like the Canadian government to take note of the special nature of farming, as nearly all countries currently do, and play an active role in the agri-food industry, as the Europeans and the Americans currently do.

Claude LaFleur Coopérative fédérée de Québec
Tuesday, March 23, 1999 St. Hyacinthe

The stability of the price paid for milk to producers has made possible a spectacular increase in production on individual farms and improvements in efficiency. These investments mean that the Quebec and Canadian dairy production use the land well and generate economic activity in each of these communities, particularly in Quebec, which are significant for our development and that of our governments. No one denies that this economic development results in the creation or maintenance of jobs.

Jean-Guy Bouvier, Syndicat des producteurs de lait de Lanaudière
Tuesday, March 23, 1999 St. Hyacinthe

...we would like to see Canada strongly request the complete elimination of export subsidies. In Canada, especially in the dairy sector, we have no export subsidies. When we go into these markets, it is as if we were going to war with no guns. We are not on an equal footing with the European Union, for example, that is the main player. According to the data that we have, the European Union and United States alone provide for 90 to 95% of all export subsidies.

Alain Bourbeau, Fédération des producteurs de lait du Québec
Wednesday, March 24, 1999 Montreal

Canada's main objectives in future WTO negotiations...should be to consolidate what has been gained by Canada's agri-food and biotechnology sector and thus to protect the public from biotechnological risks. In other words, Canada should defend liberalization of trade in GMO-based agricultural products that have been proven not to be harmful. This approach would allow us to work more, in Canada, on evaluating risks and thus producing and marketing healthy GMO-based agricultural products that would help maintain Canada's image as an ideal trading partner for many countries, particularly developing countries.

Sylvestre Manga and Professor René Côté, Université du Québec à Montréal
Tuesday, March 23, 1999 Montreal

Canadian dairy, poultry, and egg farmers want fair and effective trade rules. The Canadian farmers want clear, binding rules that are the same for everyone. The next round of WTO negotiations must ensure that all countries deliver on a commitment to fair and effective trade. That means fair and effective trade rules that are binding and enforceable and not just guidelines that allow countries to interpret them to their own benefit.

Eugene Legge, Newfoundland Chicken Producers Supply Management Group
Monday, March 22, 1999 St. John's

All I'm saying is that if it hadn't been for the supply managed system, with the new regulations that came in we likely would not be in the production of the poultry industry products that we have today. I just shudder to think of what might happen if we get the X on the wall that we can no longer be part of a supply managed system for the poultry industry in Canada.

Stuart Allaby, Nova Scotia Natural Products Marketing Council
Tuesday, March 23, 1999 Halifax

I know we can't live in the past, but there are those still in the industry who would like to look forward with the same vision they have of the past. And isn't that what this exercise is all about, whether or not we can agree on trade rules that everyone can support and live by?

Jack Johnson, Nova Scotia Milk Producers' Association
Tuesday, March 23, 1999 Halifax

For farmers in New Brunswick, across Canada and around the world, a single-minded focus on increased trade has not worked. Moreover, the deregulation of agriculture and the erosion and termination of farmers' marketing agencies—seen by many as a way to increase trade—has had numerous negative effects on farmers.

Conrad Toner, National Farmers' Union New Brunswick District Board
Thursday, March 25, 1999 Fredericton

The dairy industry took great strides to adjust its structure and operating practices to conform with the last round of the WTO. It was not so for all participating countries. Canada has set the standards for rules-based trading. At the very least, it must demand the same from all the participating nations in the next round of talks.

Robert Speer, New Brunswick Milk Marketing Board
Thursday, March 25, 1999 Fredericton

Canadian sugar beet producers want to promote free and fair trade in sugar with the US and other countries throughout the world...Creating the jobs and significant economic development for Canada from the sugar beet industry is dependent upon reaching new trade rules, both in the long term and the short term. These new rules must allow the Canadian sugar beet industry to realize its potential, through free trade or at least fairer trade.

Dave Penner and Brian Kelley, Manitoba Chamber of Commerce
Monday, April 26, 1999 Winnipeg

We urge the Government of Canada to push for a very tight negotiating timeframe and a short implementation period. In addition, we need to ensure that farmers benefit as soon as possible. Countries should be required to implement major portions of their commitments early in the transition round. Negotiations should be conducted on as broad a basis as possible. The larger the scope, the better the chance for significant results.

Brian Saunderson and Rick White, Canadian Alliance of Agri-Food Exporters
Monday, April 26, 1999 Winnipeg

We recommend that the Canadian government work with farmers to develop a numerical objective to serve as benchmarks by which Canadians can measure the success or failure of Canada's agricultural and agri-food policies. Further, because the benchmarks identified by the National Farmers Union in this brief all point towards the failure of trade and investment agreements to benefit Canadian farm families, the NFU recommends that the Canadian government refrain from negotiating further agreements until they can assure farmers that the situation will reverse.

Fred Tait, National Farmers' Union
Monday, April 26, 1999 Winnipeg

Canada is now headed down the road of eliminating marketing boards and phasing out protective tariffs. A measure of security and stability had been achieved for the remaining 3% of the Canadian population still involved in farming. The record shows who wins and who loses if you leave the vulnerable small farmers at the mercy of the vagaries of the marketplace.

Robert White and Andrew Jackson, Canadian Labour Congress
Tuesday, April 27, 1999 Toronto

There are at least three key public interest concerns related to genetically modified (GM) crops. First, there is a potential for such crops to spread, affecting non-altered plants. This potentially threatens biodiversity. Second, there is a major threat to traditional agriculture in developing countries based on re-seeding from the previous year's crop. Genetically modified 'terminator seeds' cannot re-seed from last year's crop, making farmers dependent upon seeds which are owned by the corporations which engineered them...Third, there is a potential threat to human health from genetically modified foods. At minimum, these concerns suggest the need for regulation to ensure crop segregation; separation and clear labeling of GM seeds, plants and foods; and corporate liability for any harm to the environment and health.

Rick Arnold and Jim Orr, Horizons of Friendship
Tuesday, April 27, 1999 Toronto

The issue is not whether Supply Management's current import barriers will be reduced in the upcoming WTO negotiations. We submit that the issue is when and how the transition towards more open markets will occur.

Jean-Pierre Léger and Kathleen Sullivan, Canadian Restaurant and Food Services
Wednesday, April 28, 1999 Toronto

The Canadian sugar industry has encountered substantial difficulties with the administrative practices of US officials regarding access to tariff rate quotas for sugar and sugar-containing products. The negotiations should seek to eliminate such practices and ensure cooperation so country-specific access commitments are not undermined by ineffective or restrictive border measures. Reclassification of freely traded products into TRQ categories should be prohibited.

Sandra Marsden and Andrew Ferrier, Canadian Sugar Institute
Wednesday, April 28, 1999 Toronto

Canada cannot compete with the treasuries of the U.S. and the E.U. as a means of balancing supply and demand to stabilize producer incomes.

Richard Ruchkall, Canadian Turkey Marketing Agency
Wednesday, April 28, 1999 Toronto

We would like to see the total elimination of the blue box category for domestic support programs. Also, we'd like to see maximum levels or caps on commodity-specific support programs.

Fred Brandenburg, Ontario Soybean Growers' Marketing Board
Thursday, April 29, 1999 London

Canada is a small player internationally and should seek to increase its influence through alliances with other similar countries. The Cairns Group is ideally suited for this purpose.

Dennis Jack, Ontario Corn Producers' Association
Thursday, April 29, 1999, London

I recommend this government institute policies that support the family farm. Export expansion and other expansion-based policies do not do this. Instead they pave the way for corporate scale production and undermine the very markets which family farms depend on.

Perry Pearce, National Farmers' Union
Friday, April 30, 1999 Windsor

A farmer would not send a steer to do a bull's job. Please ensure you are effectively equipped to do the job right at the international trade table. I urge you, at the upcoming WTO table, to defend supply management at the table, defend Canadian sovereignty over farm policy support measures and water, and respect and defend the integrity of Canada's independent producers. Because of our close trade ties, Canada is often in the position of supporting the American position on matters relating to international trade. Tying ourselves to the U.S. trade agenda in agriculture is like tying our farmer to the bowsprit of an icebreaker...It is in the interest of Canadian communities that you be aware of this and defend Canada's sovereignty over farm policy.

Wendy R. Holm, Agrologist
Tuesday, April 27, 1999 Vancouver

If you can do nothing else going into the Seattle round of WTO, please, I implore you...protect the green box programs at minimum by ensuring that there are so-called mouse holes for small-scale production of food and agriculture.

Herb Barbolet, Farm Folk/City Folk Society
Monday, April 26, 1999 Vancouver

Canada should vigorously defend its right to maintain effective marketing structures.

Arne Mykle, BC Council of Marketing Boards
Tuesday, April 27, 1999 Vancouver

Our Canadian supply management system is going to be under attack at the upcoming WTO round. I would like to urge the Canadian trade negotiators to stand up, to really stand up, for supply management in the way we know it. No change to the system should be negotiated without proper consultation with the affected supply management sectors beforehand.

Jan Slomp, National Farmers' Union
Wednesday, April 28, 1999 Edmonton

...if we are to be effective early this time, we cannot sit back on our heels as we did the last time when the so-called balanced approach which left Canada taking what it was given, out of the negotiations.

Dale A. Riddell, Agri-Industry Trade Group
Thursday, April 29, 1999 Calgary

...the conclusion of a 'zero for zero' trade agreement on barley and barley products will allow trade in these products to take place on a level playing field, governed by true market signals and competitive disciplines, which will be to the benefit of the Canadian barley industry.

Glenn Logan and Cliff Foster, Alberta Barley Commission
Thursday, April 29, 1999 Calgary

Grain farmers have adapted to a global trading environment and for this we must demand that the barriers to fair trade in the products we sell on world markets be reduced and eliminated. A fair and balanced trade agreement must be the overriding goal and Canada will have to be prepared to make concessions. This is not to say that we must sacrifice one sector for the good of another but that the needs of the country as a whole must be considered during the negotiations. It is unrealistic for the supply managed sector to expect continued high levels of protection from outside competition and continued inflated returns from the marketplace at the expense of Canadian consumers. These highly protected and managed industries are going to have to mature, as the grain industry has, to allow access to the Canadian market for their sensitive products and to take advantage of export opportunities.

Ted Menzies, Western Canadian Wheat Growers' Association
Thursday, April 29, 1999 Calgary

I can tell you that the farmers that I meet with in the coffee shops, in the gas stations, in the grain elevators in my community aren't very excited about hearing that the exports have increased to \$20 billion when they look at net farm income that has decreased by 19% over the course of those five years.

Michelle Melnyk, Youth President, National Farmers' Union
Thursday, April 29, 1999 Calgary

This year, the Europeans have an export subsidy that has paid up to \$139 per tonne for barley malt. It's impossible for Canadian farmers to compete with countries that are willing to pay customers that much money to buy their commodity. Canadian farmers can't compete with that on an economic basis. It's no wonder that Canadian off-shore sales this year for barley are virtually non-existent.

Marvin Shauf, Saskatchewan Wheat Pool
Friday, April 30, 1999 Saskatoon

A worry for me as a primary producer is that in the bargaining table for reduced tariff on processed products, reduction of support for primary agriculture must not become the carrot. The emerging issues of health and sanitary restrictions offer more subjective and intangible trade barriers to complicate the millennium round of WTO. Where does science stop and politics begin? Can we combat fears with consumer awareness, communication and trustworthy labelling of products? Does pricing have the power to change attitudes?

Noreen Johns, Saskatchewan Women Agricultural Network (SWAN)
Friday, April 30, 1999 Saskatoon

What happens in an international market which is preoccupied with free trade is that hunger can, and does, increase because locally-grown food bypasses the hungry in search of market. The theory of supply and demand means that food flows past those with real demand – the hungry – to those who have effective demand – people with the money to buy food. It is especially poignant when producers themselves are not in the category of people with access to or the means to buy food. Despite record and rising exports, Canadian farmers are facing the lowest income levels since the 1930s. If a Canadian farm family cannot make a living growing 1,000 acres of grains and oilseeds using the latest technology, how will Thai and Peruvian farmers survive?

Michelle Beveridge, Oxfam Canada, Saskatoon Office
Friday, April 30, 1999 Saskatoon

Agriculture and Agri-food Issues

Box 4.1 A glance at terminology in the Agreement on Agriculture

The signatories agreed to eliminate or reduce certain subsidies on the basis of a colour code whose design, resembling traffic lights, was a Canadian suggestion. Red means all subsidies in that category must be eliminated, as with export subsidies. Yellow means measures that distort trade and must be restricted, while green means programs that are restriction-exempt because of their neutral effect on trade, as with agricultural research programs. At the conclusion of the Uruguay Round, negotiations on agriculture had bogged down, and the European Union demanded and got a special category, coded blue, that divides the yellow box into two classes: measures that are the subject of reduction commitments and measures that do not need to be reduced because they fall within production-limitation programs.

In the Beginning was the Uruguay Round

In 1994, the Agreement on Agriculture resulting from the Uruguay Round created great expectations because the signatory countries' domestic policies and policies on agricultural trade were, for the first time, made subject to rules aimed at better disciplining and structuring world trade.

The main objective of the Agreement is to make the agriculture sector more market responsive. Various tools and concepts were used in establishing a framework for agricultural trade, three of which are primarily related to discipline: tariff rate quotas, which have replaced import quotas; aggregate measure of support, which is often referred to in connection with the widely known green, blue and yellow boxes and which makes it possible to target reductions in domestic support; and control of export subsidies. The Uruguay Round also cleared the way for the introduction of a set of basic rules governing the establishment of national standards for sanitary and phytosanitary measures aimed at ensuring food safety and health. These measures, based on scientific evidence, are also aimed at preventing national regulations from being unfairly used as

protectionist measures, which are often referred to as non-tariff barriers.

Expectations were high, but as the Committee's hearings showed, Canadian farmers still question the effectiveness of the agreement and differ in their views on its impact. The anticipated positive effects on farm income have not always come to pass, and many stakeholders in the farming sector told the standing committee that Canada has been too quick in adjusting or eliminating its farm support programs in order to meet its reduction targets under the Agreement on Agriculture. As the representatives of the Canadian Wheat Board pointed out, expectations of a reduction in discrepancies in agricultural support among countries were obviously idealistic. The Producer Subsidy Equivalent (PSE), a concept developed by the OECD to measure domestic support, was \$318 per acre of crop in Europe, compared with \$68 per acre in the United States and only \$15 in Canada.¹

Canadian farmers are therefore preparing for the upcoming Multilateral Trade Negotiations (MTN) with the feeling that their expectations have not been met and their competitors have access to subsidy levels that are not matched in Canada. The message conveyed to the Committee by the Canadian Federation of Agriculture speaks

¹ Canadian Wheat Board, *Presentation to the House of Commons Standing Committee on Foreign Affairs and International Trade*, Winnipeg, April 26, 1999.

volumes: “A new agreement which just continued the existing formula reduction of protection and support, without correcting the inequities in the current agreement, will not necessarily be beneficial to Canadian farmers. In fact, such an agreement might just exacerbate current inequities.”²

These inequities are rooted in the Agreement on Agriculture itself. During the Uruguay Round, the negotiations over agriculture repeatedly derailed the entire discussion, primarily because the European Union (EU) and the United States continually demanded some individual flexibility in applying their own agricultural policies to the new international trade rules. Only special talks, namely the “Blair House” negotiations in November 1992, and the creation of a special class of domestic support (the famous blue box, which, with the passage of time, proved to be one of the domestic support measures that created the most distortion on world markets, particularly the grain and oilseed markets) were able to resolve this strong-arm tactic by the European Union and the United States.

It is therefore not surprising that the Agreement on Agriculture includes a commitment to carry on the discussions during the upcoming multilateral trade negotiations. From that standpoint, the Agreement on Agriculture represents the unfinished business of the Uruguay Round.

Then Came the Multilateral Trade Negotiations (MTN)

As the Members of the Committee observed during the hearings, stakeholders in the agriculture and agri-food sector have a full understanding of the issues at play in the WTO’s upcoming multilateral trade negotiations and put forward proposals for the negotiations that were organized and well thought out. In contrast to what transpired during the Uruguay Round, where all new proposals for agricultural reform simply

opened the door to the unknown, the way is paved this time, and stakeholders in the agriculture sector have a clearer vision and know that they have to lay down the new guideposts required by the Agreement on Agriculture.

Through a series of meetings, the federal and provincial governments have helped the agriculture industry develop a vision for the forthcoming WTO negotiations. Furthermore, the Committee’s cross-Canada consultations and the earlier hearings by the Agriculture and Agri-food Committee were used as forums to be used for a public debate of the future of agricultural policy. The hearings of the Standing Committee on Agriculture and Agri-Food, which published its Report in March 1999, enabled stakeholders in Canada’s agriculture sector to fine-tune further the arguments they made to our Committee. More than ever before, people in the Canadian agriculture sector have made their expectations known and will keep a close eye on how the multilateral negotiations unfold.

The Committee’s hearings highlighted three main points: the vast majority of stakeholders in agriculture and agri-food support multilateral trade; Canadian farmers believe that the obligations of countries under the current Agreement on Agriculture must be met before new negotiations begin; and, most importantly, Canadian farmers have more or less come to terms on the bargaining position Canada should adopt.

That consensus, the main points of which were discussed during the Committee’s hearings, took its final form at an April 1999 conference in Ottawa called *Toward an Agricultural Trade Position: Dialogue with Canadian Industry*. The delegates at that conference recognized the importance of the following principles:

- **Export subsidies** — Export subsidies have to be eliminated in the upcoming MTN, and a clear, standard definition of what is and what is not an export subsidy must be produced;

² Canadian Federation of Agriculture, *Evidence*, Meeting No. 98, March 11, 1999.

- **Market access** — The objective of minimum access equal to 5% of domestic consumption established during the Uruguay Round has to be respected, and the allocation of access has to be feasible and transparent. In addition, tariffs applicable to imports within the limits of the commitment access should be reduced to zero. The “zero-zero” option, that is, no tariff and no export subsidy, should be developed for industries that believe it would be beneficial, in particular the grain and oilseeds industry.
- **Domestic support** — Domestic support has to be capped, and criteria used in programs that may be included in the green box have to be clarified. The blue box has to be eliminated and rolled into aggregate measure of support (AMS).
- **State trading enterprises** — State trading enterprises have to be preserved and made more transparent; their activities rather than their status have to be examined
- **Biotechnology and sanitary and phytosanitary measures** — These measures have to be approached from the viewpoint of science, not sentiment, particularly with respect to genetically modified organisms, which are coming up against more and more technical barriers.

The principles of this consensus will now be taken into consideration at the federal-provincial meeting of agriculture ministers being held in July in Prince Albert, at which time the ministers will present their own perspectives. Finally, the federal cabinet will examine Canada's initial bargaining position in the light of all these discussions.

Setting aside the elimination of export subsidies and the elimination of the blue box — a class of direct support linked to production but also associated with criteria for production limits — the Committee's hearings showed that the other principles of the consensus appear to be more fragile. It warrants mentioning at this juncture that while the elimination of export subsidies and

the blue box clearly rallied the entire Canadian farming community, the explanation may be that the use of these two forms of support in Canada is either non-existent or very limited, as in the case of export subsidies. On the other hand, the administration of tariff quotas and market access, tariffs within and outside access commitments, domestic support (which includes supply management), state trading enterprises, non-tariff barriers related to sanitary and phytosanitary measures, and finally biotechnology are part of everyday life for farmers, processors and other players in the Canadian agri-food industry.

As stated in Chapter 2, many witnesses also conveyed to us their fear that one product might be “sacrificed” during the negotiations in order to promote the development of another or that agricultural interests might be “traded away” for those of another sector of the economy. Since the upcoming MTN seem to be shaping up more as a general round of negotiations than a round limited to agriculture and services, fears about agriculture being used as a bargaining chip seem to be mounting, although it is difficult at this time to say how likely that is to happen.

The apparent consensus on Canada's position and the fear that agriculture will be used as a bargaining chip echo to some extent the inflexibility of the European approach. The EU itself recently came to a consensus on changes in its agricultural policy, better known as “Agenda 2000”. Both the United States and the Cairns Group, of which Canada is a member, denounced Agenda 2000, arguing that Europe's agricultural reforms do not do enough to further liberalize trade. The simple response from European Agriculture Commissioner Franz Fischler was: “It must be quite clear to all our WTO partners that the outcome of Agenda 2000 is not an opening bid on the part of the EU. But rather the policy with which the outcome of these negotiations must be compatible.”³

In that context, it is hard to see how countries that come to the bargaining table with a consensus on

³ Reuters, *EU Farm Lobby Says No Concessions in Next WTO Round*, Brussels, May 7, 1999.

its agricultural policy will be able to negotiate unless compromises within a given sector or between sectors are eventually laid on the table.

As Robert Wolfe reminded the Members of the Committee, “the WTO is a process not a destination.”⁴ For stakeholders in the Canadian agriculture sector, the consensus they have reached is a destination that could become a minefield for the Canadian negotiators. It is on this score that the significance of the Committee’s hearings comes into full focus, because beyond the consensus, the hearings spotlighted the points that could quickly lead to cracks in Canada’s position.

A. Market access

While there may in fact be a consensus among agricultural groups on real access equivalent to 5% of consumption and reduction to 0% of the tariffs applicable to access commitments (intra-quotas), the fact remains that many groups and individuals told the Committee, they considered that approach to be inadequate. Foremost among those holding that view was the group made up of the Canadian Meat Council, the Canadian Pork Council and Canada Pork International, which called for an increase in the access commitment, that is, the adoption of a percentage higher than 5% of domestic consumption, and the reduction of all other import tariffs.

Some representatives of the processing sector, in particular the officials from McCain Foods, also made the point that this lack of symmetry in Canada’s trade policy, which consists in maintaining high tariffs outside access commitments for some products that are sensitive to foreign competition and not for others, does not foster the dynamic development of the processing sector and makes for slower adjustment by the agriculture sector to new trends in market globalization. Food Products and Consumer

Goods Manufacturers of Canada (FPCGMC) reminded the Committee Members that Canada has set a target of doubling its agri-food exports to \$40 billion by the year 2005. To meet that target, they argued, Canada will have to substantially increase the proportion of value-added products among its exports and strike the following compromise regarding the strategy for creating export opportunities for Canadian products: be open to the idea of reducing import tariffs as a way of creating more opportunities for Canada to access foreign markets.

In somewhat the same vein, representatives of Canada’s sugar industry told the Committee that previous trade negotiations on freer trade have not resulted in greater market access for their products. The reason for this is that the United States, which constitutes the primary export market for the Canadian sugar industry, has applied strict rules in administering its tariff quota, making real market access gains impossible for Canadian sugar producers. The latter’s representatives said that if the proposed 5% minimum access actually opened up on an individual product basis, it could mean an increase of \$400 million in Canadian exports of refined sugar and products containing sugar. This would not be sufficient in and of itself: to achieve its full potential, the Canadian sugar industry argues, certain existing rules such as the rule of origin and the practice of establishing intracontinental access based on individual products (raw and refined sugar treated as distinct products) would have to be revised and improved to encourage trade. For such a revision to be possible, the sugar industry considers that Canada must also aim at reducing, progressively and following a pre-determined plan, excessive extra-quota tariffs, while recognizing that these tariff reductions would have to be equitable and evaluated separately for each sector and product.

The fact that there are differences in viewpoint from sector to sector is not surprising given that

⁴ Robert Wolfe, Canada’s role in the WTO and in the “Millennium Round” of negotiations, statement to the House of Commons Standing Committee on Foreign Affairs and International Trade, March 2, 1999.

Canadian agriculture is extremely diverse, geographically subject to different constraints and characterized by marketing structures that vary considerably from product to product. The same is true of other countries, including EU countries, which widely use dual-track agricultural policies to protect their sensitive sectors; however, in contrast to countries that are able to rely on significant domestic demand, Canada has to look to the foreign market to sustain its growth. That reliance on foreign markets means that any protectionist policy Canada might adopt lays the country open to criticism from its trading partners. This is the type of situation Canada is bound to end up in if it pursues the zero-zero option for the grain sector, as was recommended to the Committee by grain sector representatives, and at the same time adopts a more restrictive tariff approach to other products, especially products that are subject to supply management.

The least solid of all the elements of the consensus appears to be market access. However, as the Committee observed, Canada is not alone in wanting to defend import-sensitive sectors as well as sectors that are more open to global competition.

B. Domestic support

Given that Canada has more than met its reduction obligations and done so faster than most of its trading partners and that it has respected both the letter and the spirit of the Agreement on Agriculture while many other countries have been fairly lax in their interpretation of the rules set out in the agreement, the message from the vast majority of witnesses is clear: the clarity and fairness of the definitions and regulations governing support programs have to be improved.

If the blue box were not eliminated, as requested by the vast majority of Canadian farming stakeholders, or if the European Union and the United States were to succeed in maintaining their domestic support capacity, Canada would have to make sure it preserved some leeway to counterbalance the effects of support spending in

other countries, which until now has boosted world farm commodity stocks and driven prices down.

The issue of the ability to sustain and stabilize farm income was raised before the committee by the Union des producteurs agricoles du Québec (UPA). The UPA made an interesting parallel with American policy, which should stand as a lesson for Canada. To meet its international trade obligations, the United States in 1996 introduced the *Farm Bill*, which, although it was generous, reduced income security for American farmers. Two years later, when he announced a series of new measures to support American farmers' income, the American secretary of agriculture admitted that the projections that had been used to develop the *Farm Bill* were overly optimistic and that special measures were now necessary. The lesson is clear: the negotiators in the upcoming MTN will have to drive home the message that it is essential that the farm income safety net be preserved to a sufficient degree to allow governments to deal with the market ups and downs that have always been a part of farming.

For some agricultural groups, this ability to sustain and stabilize farm income also depends on Canada's ability to make decisions on and manage, in cooperation with farmers, supply management and other marketing structures it considers most appropriate to its agricultural economy. Those groups believe that these structures have proven themselves because they have allowed farmers to maintain stable incomes despite major changes in agricultural markets. Again, the message is clear: these marketing structures are rooted first and foremost in domestic decisions and should not be compromised at the upcoming MTN.

C. State trading enterprises

The United States announced some time ago that it would have state trading enterprises (STEs) like the Canadian Wheat Board in its sights in the upcoming MTN. However, as the Saskatchewan Wheat Pool pointed out in its submission, the

numerous studies that have been done on CWB operations have shown that the Board has always adhered faithfully to trade rules and that the Board's activities have not created any significant distortion on international markets.

Even though there are still opposing views among agricultural stakeholders on the direction the Canadian Wheat Board should take in the future, the consensus to look at the activities of STEs rather than their status and to make STEs more transparent is a very smart approach because it provides the transparency that is being called for in Canada and meets the requirements set by Canada's trading partners.

STEs may have a monopoly on imports, exports or both. In any event, their monopoly gives them substantial market power. In a comprehensive brief submitted to the committee, representatives of the Union of Québec Liquor Corporation (SAQ) Employees pointed out that the SAQ is "a commercial enterprise that was originally set up for social reasons". Therein lies the Canadian vision, which consists in looking at the activities of STEs, not their status. However, the MTN are expected to focus less on the social or cultural role of STEs and more on the distortion they create for trade. The SAQ employees' union apparently saw that move coming, as it recommended that if the issue of monopolies is subject to WTO negotiations, the debate will have to include all private monopolies and oligopolies, not just public monopolies. Private monopolies and oligopolies have at least as much market power; that power has to be discussed too.⁵ STEs are therefore recognized as exercising market power, but broadening the debate to cover all types of monopoly will ensure that STEs stop getting all the attention.

D. Sanitary and phytosanitary measures and biotechnology

1. Sanitary and phytosanitary measures

While the witnesses who appeared before the Committee were unanimous in requesting that sanitary and phytosanitary measures continue to be subject to rules based on scientific principles, few of them gave a really detailed account of the problems that can sometimes create for trade. Some witnesses did say, however, that the agreement on the application of sanitary and phytosanitary measures (SPS) was working fine and did not require new negotiations. The Committee will also return to these issues later in the Report in considering market access negotiations and environment-related concerns.

The SPS Agreement signed during the Uruguay Round is aimed at preventing the use of sanitary and phytosanitary measures as roundabout ways of restricting trade and at the same time recognizes that countries can adopt whatever measures they feel are necessary to protect human, animal and plant health. The SPS Agreement also recognizes that countries can set their own levels of risk tolerance but also have an obligation to ensure that sanitary and phytosanitary measures are based on scientific principles and are not maintained without some scientific basis.

While it is valid and necessary, this right to establish the level of risk tolerance creates a problem in the quest for a balance within the SPS Agreement. Just as it varies considerably from person to person, tolerance of risk varies from country to country. For consumers, the risk associated with the safety of food products is often not based on a scientific assessment, but rather on political, social or cultural factors. Moreover, because there is no such thing as zero risk, a consumer — or a country — can sustain almost indefinitely its resistance to acceptance of a food or other product. An example of this

⁵ Société des alcools du Québec employees' union, "State Trading Enterprises and the World Trade Organization: the Case of the Société des alcools du Québec, March 1999.

situation is the European ban on imports of beef from animals treated with growth hormones. Even though Canada and the United States considered the action unwarranted and the WTO supported them in that view, the European Union, primarily because Europeans have a stronger aversion to risk than do North Americans, continues to look for — and find — additional scientific data to support its ban. So two sides can use the same science to reach opposite conclusions. This is an excellent illustration of the fact that what is known in Canadian law, notably Canada's environment legislation, as the precautionary principle, is only beginning to emerge at the WTO level, but will be having an important influence in the next round of negotiations. The precautionary principle essentially says that protective measures should be taken in the absence of scientific certainty ("if in doubt, don't"). It will be at the centre of WTO discussions, where participating countries will have to develop a consistent and transparent method of applying it.

Two trends already appear to be taking shape for the upcoming WTO negotiations. The first stems from the fact that some countries find the SPS Agreement too confining in terms of market openness; the second is the growing trend, fueled primarily by the European Union, that would see socio-economic factors also taken into account in establishing sanitary and phytosanitary measures.

The notion of "multifunctionality" in agriculture was rarely mentioned during the Committee's hearings. However, in member countries of the European Union, multifunctionality in agriculture, which means taking into account other aspects of farming, such as the environment, preservation of biodiversity and animal welfare, is part of day-to-day life for farmers. Faced with higher production costs because of stringent health and environmental standards, farmers fear for their ability to compete in the global marketplace and therefore demand that imported products be

required to meet the same standards. Because they have the support of European consumers, their already considerable political clout has soared. On the other hand, this is a perfect example of a situation where a group of countries uses international trade in a bid to impose its own socio-economic values. Considering the size of the European market and its ability to influence the WTO negotiations, Canada will have to stay alert if the SPS Agreement is reviewed and amended, especially where the issue of acceptable risk based on scientific evidence arises.

2. Biotechnology

The rapid development of genetically modified organisms (GMOs) in agriculture is at odds with the market access GMOs are given. Faced with an array of trade barriers against GMOs, the United States has put biotechnology on its list of priorities for the upcoming WTO round. The stakes are high for Canadian agriculture because many farmers rely on biotechnology to diversify their output and increase their revenue.

A review of the WTO rules appears to be needed given that the number of trade irritants related to GMOs is growing steadily. As Sylvia Ostry's submission to the Committee observed: "Since the establishment of the WTO the most high-profile and contentious disputes have concerned environmental or food safety issues. And more are yet to come if we are to judge by the increasing clamour over GMOs".⁶ The SPS Agreement could be used as a framework for dealing with GMO issues and biotechnology in general; however, if that approach is taken, it will also mean the door will be open to other amendments that could have even broader trade implications.

The issues raised by biotechnology are complex and far-reaching, and here, too, public perceptions and concerns vary considerably from country to country. In Canada, the debate over GMOs generally centres on health issues, but in Europe, the potential environmental impact

⁶ Sylvia Ostry, *Future of the WTO*, Brookings Trade Policy Forum, April 15, 1999.

(biodiversity, uncontrolled genetic mutation, etc.) of using GMOs is more the focus. Many developing countries see biotechnology as a way of increasing their food security and carving out a place for themselves in the world market. That is one aspect of the forthcoming WTO negotiations that must not be underestimated. One thing is certain: agriculture is in the midst of a technological revolution that the WTO will have to discuss. If the Agreement on Agriculture is the unfinished business of the Uruguay Round, the SPS Agreement and biotechnology are at risk of being the unfinished business of the next round of negotiations.

Conclusions and Recommendations

The Committee's hearings showed that

stakeholders in the Canadian agriculture and agri-food sector are prepared to finalize the Agreement on Agriculture reached during the Uruguay Round in order to further liberalize trade in agricultural products. The Agreement on Agriculture may have established better rules to facilitate agricultural trade, but those rules have not been interpreted or applied in the same manner in all countries. The question was raised during the hearings: why have rules if no one is going to enforce them? Before a new agreement on agriculture is negotiated, Canadian farmers want the spirit and letter of the current agreement to be respected, particularly with regard to access commitments.

Recommendation 12

Canada should open the discussion in the upcoming multilateral trade negotiations on agriculture by demanding that all signatory countries begin by respecting their current obligations.

Recommendation 13

Canada should also make sure that the new rules on agricultural trade are transparent and apply equally to all countries according to their respective commitments.

Farmers and other stakeholders in the agri-food industry have developed a national consensus that reflects their basic expectations, but they still realize that multilateral trade negotiations are a process which changes as new demands are put

forward by the signatory countries. They are prepared to review Canada's bargaining mandate provided the basic objectives identified by consensus are respected throughout the negotiations.

Recommendation 14

In the upcoming trade talks, Canada should endeavour to maximize access for Canadian farm exports, but without jeopardizing its ability to maintain orderly marketing systems or its flexibility in developing national farm support programs, and especially without using agriculture as a whole or a specific agricultural product as a bargaining chip.

It seems clear that sanitary and phytosanitary measures and biotechnology, in particular with regard to genetically modified organisms (GMOs), will be contentious subjects during the next round of multilateral negotiations on trade in agricultural products. While scientific principles constitute the best basis for assessing the risk

associated with the trade in GMOs, science has its limits, as is demonstrated by the conflict over imports of hormone-fed beef. The precautionary principle, which governments must apply to protect their consumers, is now the subject of greater awareness, and this will influence future trade negotiations. In an agri-food market where

the consumer is increasingly concerned about health issues, a growing number of people believe that science will remain the ultimate reference but that the WTO will not be able to ignore the impact of trade interests on health or disregard consumers' preferences and freedom.

Finally, since it is expected that Canada's position on agriculture will change as the WTO negotiations proceed, it is important that farmers and stakeholders in the agri-food business be closely consulted whenever new tactics are needed.

Recommendation 15

The Committee endorses the Canadian trade position of using science as the ultimate reference for sanitary and phytosanitary measures, and in the area of agricultural biotechnology, particularly in the case of genetically modified organisms. However, given the impasse sometimes created by the absence of consensus on how to interpret the precautionary principle, and the negative impact that this could have on Canadian farmers, the Committee recommends that the Canadian Government carefully analyze emerging trends in the area of assessment of risks associated with biotechnology.

Recommendation 16

The stakeholders in the agriculture and agri-food sector, as well as all other affected sectors and Parliament, should be regularly consulted on possible changes in Canada's initial bargaining strategy in order to analyse the impact of the proposed changes.

ONGOING MARKET ACCESS ISSUES

“What Canadians are Saying”

...Canada has become one of the biggest users of antidumping and countervailing measures. Antidumping trade restrictions are extremely costly and have no economic basis...Canada should push for the end to this form of protectionism. And Canada must lead by example.

Professor Eugene Beaulieu, Department of Economics, University of Calgary
Thursday, April 29, 1999 Calgary

Looking at the agreement on subsidies and countervailing duties that resulted from the Uruguay Round, Canada should concentrate its efforts within the WTO on improving and clarifying existing provisions regarding the definition of the subsidy concept and the conditions for imposing trade sanctions. To be countervailable or subject to trade sanctions, a subsidy must be specific. That is, it must be limited to certain enterprises or industries within the jurisdiction of the granting authority. This is particularly important, because we should be seeing it as being against the territory of a whole country.

Professor Gilbert Gagné, Department of Political Science, Université Concordia
Thursday, March 25, 1999 Montreal

We fully support the government in its efforts to defend the TPC against the retaliatory complaint. If Canada's appeal of the current WTO decision is rejected and changes have to be made to the TPC program, the environment industry must be fully consulted prior to a final decision on any changes. Environmental technology companies from other countries have access to a much wider and more generous range of government support than Canadian environmental companies. Our one major national program, TPC, must not be diminished by international pressure. We would further urge that our government review and seek to match the advantages that governments in other countries provide to their environmental technology and service providers.

Colin Isaacs and Robert Fraser, Canadian Environment
Industries Association (CEIA)
Thursday, March 25, 1999 Montreal

...the antidumping rules and the competition provisions adopted by national legislative assemblies on unfair pricing practices are all pursuing a common objective, namely, maintaining the conditions for fair competition. This leads us to question the logic and pertinence of pursuing a public policy of maintaining two distinct legal systems, one which applies to foreign producers and which is based on the administration of anti-dumping duties, the other which polices the operators in the domestic market and which is designed to prevent predatory pricing policies.

I feel that this dual system is artificial; I find it difficult to explain the logic behind it. Consequently, during the next round of WTO negotiations, I think that Canada should, on the one hand, make an effort to promote the convergence of the anti-dumping system and, on the other hand, advocate competition rules with respect to unreasonably low pricing practices.

Professor Vilaysoun Loungnarath, Faculté de droit, Université de Montréal
Tuesday, March 25, 1999 Montreal

Over a decade ago, members of Parliament identified the serious problems that would be created by an asymmetrical international trade policy that attempted to maintain market access barriers for dairy and poultry supply-managed commodities while at the same time adopting free trade for downstream food processors such as McCain Foods. This somewhat lopsided trade policy has created a competitive disadvantage for Canadian food processors because you must compete against foreign processors that enjoy significant advantages due to their lower dairy and poultry input costs.

Mr. Arnold Park, McCain Foods Inc.
Thursday, March 25, 1999 Fredericton

...in a general sense there's always a tendency to include fish with agriculture and food, and that presents tremendous challenges for us in terms of how trade issues are debated and discussed. There's a very different environment in the seafood industry...Fish is almost exclusively an export product.

Alastair O'Reilly, Fisheries Association of Newfoundland and Labrador
Monday, March 22, 1999 St. John's

[U]npredictable, hard to manage, and costly disruptions to the supply chain are damaging to an industry's future and to the future of those who depend upon it. That is precisely the situation we face today under the Canada-United States Softwood Lumber Agreement. The industry that has been the number one contributor to our balance of trade is now constantly subject to threats, countervail trade actions and a general atmosphere of protectionist harassment. Under the agreement, production, shipments and inventories must be managed to annual and quarterly quotas with consequences for both stability of supply and price. Worse still, the quota restrictions under the softwood lumber agreement do not apply to all producing regions of Canada. Nor do they apply to lumber exports from other countries into the U.S. market.

David Emerson, Free Trade Lumber Council
Tuesday, April 27, 1999 Vancouver

In Asia tariffs and other important import restrictions still play a prominent role in inhibiting the expansion of trade in forest products. The Asian market for forest products is significant as the recent down turn in the Asian demand for forest products and the effect that it has on sales from Alberta and Canada has demonstrated. Canadian spruce pine fir lumber still has 4.8% tariff when it enter Japan. This places Canadian lumber exporters at a disadvantage compared to the Japanese industry who in many cases currently, and continue to import raw spruce logs which are duty free. Spruce logs when manufactured into lumber are a direct competition to the spruce pine fir lumber that we export to Japan.

Gary Leithead, Alberta Forest Products Association
Wednesday, April 28, 1999 Edmonton

As you look at trade policy and the effect that it has on the Canadian I think the auto industry provides a very positive example, not without areas of concern, but an area in which Canada and the United States in particular have been able through trade policy to do a tremendous

amount of good for the industries that have employed literally thousands of our workers on both sides of the border.

Christopher Sands, North American Auto Project,
Centre for Strategic and International Studies
Friday, April 30, 1999 Windsor

The Canadian wine industry is seeking unfettered access to the European Union for Canadian wines made entirely from grapes grown in Canada. This is the treatment all EU wines receive in Canada without a wine agreement. The reverse is not true for Canadian wines going to the EU.

Roger Randolph, Canadian Wine Institute
Thursday, May 6, 1999

Senior levels of government should consider the fact that local government is not exempt from the cost of red tape created by these international trade and investment agreements...The legal department of the District of Squamish is focused on dealing with zoning problems, not on the fine points of international treaties.... Will time and resources be provided? Will municipalities be given copies of the draft texts of international agreements with adequate time to review them before the federal government takes action on them?

Lyle Fenton, Municipal Councillor, District of Squamish, BC
Monday, April 26, 1999 Vancouver

The WTO Working Group on the Agreement on Government Procurement is considering the right to foreign suppliers to have equal rights to bid on contracts for sub-central governments. What would this mean to a hospital or for a health board? What about the impact of that on our communities? The only question our government is asking is through a market-access study about how Canadian exporters might benefit. But what about the benefits to the public?

David Ridley, Hospital Employees' Union
Monday, April 26, 1999 Vancouver

We have serious concerns whether the trade-oriented staff in the Department of Foreign Affairs fully appreciate the consequences for those so-called 'sub-central governments' (i.e., provincial and local governments) that would have to harmonize their procurement practices to meet the international standards that are currently only required to be followed by the federal government as a signatory to the AGP. The price for meeting federal trade objectives will be paid by provincial and local governments across the country, without the certainty of receiving any of the benefits of increased trade. Our organization feels that these kinds of [government procurement] requirements would be excessively onerous for local governments across the country to meet. We are recommending to the Federation of Canadian Municipalities to advocate that participation by other levels of government in a revised AGP should be a provincial option, with each province seeking the formal concurrence of its local government organizations, prior to agreeing to be bound by the WTO rules for government procurement.

John Ranta, Union of British Columbia Municipalities
Thursday, May 20, 1999 Vancouver

Ongoing Market Access Issues

In this Chapter, the Committee examines market access issues as they relate to merchandise trade other than agricultural goods, which were dealt with in the previous chapter. Traditionally, GATT negotiations were concerned only with impediments to goods trade. Over the years, the result has been a substantial lowering of tariffs and non-tariff barriers affecting the flow of product between countries. Canada has always been a strong supporter of the GATT/WTO primarily because it facilitated access to the world's major markets for Canadian producers, assured Canadian exporters' through a system of multilateral rules' that they would not face discriminatory practices in foreign markets, and promoted increased competitiveness and productivity in the domestic market through lower cost inputs for manufacturers and producers and greater consumer choice. Freer trade policies have been continued in the FTA and NAFTA and in new trade initiatives such as FTAA, APEC, negotiations with EFTA, and through various WTO sectoral agreements.

Market access will be a major issue to be addressed in the forthcoming round of WTO negotiations. The traditional meaning of market access – for example, issues relating to tariffs for industrial and agricultural products, as well as to non-tariff barriers such as standards and technical barriers to trade, customs valuation, antidumping and countervailing duties, safeguard actions, rules of origin, and import licensing, have changed considerably as a result of globalization. Market access is being considered now increasingly as the condition governing both access and presence for goods, services, investments, ideas, and business people. With enhanced globalization, the activities of the private sector are less likely to be constrained by national boundaries, information/communications and computer advances are being rapidly disseminated world-wide, and improved modes of transportation continue to reduce distances and border obstacles to the movement of

goods. All forecasts suggest that the trend toward greater economic interdependence will continue and that the linking of production, technology and marketing along value added chains will heighten competition for both input and final goods throughout the world. An important characteristic of the new global trading environment is the potential for conflict between policy fields. Thus, the domestic framework of structural and sectoral policies must complement trade policy objectives.

While the traditional market access issues dealing with the treatment of goods at the border may not have the same appeal or intellectual attractiveness associated with some of the newer trade related issues (investment, competition policy), they nonetheless are basic to Canada's current trade policy, and are fundamental to, and continue to be important for the effective functioning of the world trading system. Merchandise market access issues cover a very wide range of subject matter most of which has been the object in one form or another of previous negotiations. For Canada, the WTO Agreements represents our primary trade agreement with the rest of the world. The Uruguay Round was one of a number of important initiatives taken by Canada in recent years to improve foreign market access for Canadian goods. The rules applied by our trading partners at their borders continue to be important for the multilateral trading system. The Free Trade Agreement with the United States, NAFTA, the free trade agreements signed between Canada and Chile and Israel, and the current discussions taking place in APEC, FTAA, EFTA are all directed to improving the position of Canada in the global marketplace.

While much of the discussion relating to the forthcoming round has been about implementation issues and the new issues, tariffs continue to be seen as an important element of the multilateral trading scene. A number of complex tariff issues will be on the table for negotiation in the forthcoming WTO round such as the basic

approach to be used for possible tariff reductions, how to deal with tariff peaks, bindings, preferences for developed and the least developed countries, regional preferences, and better security of market access generally. In this connection, it is relevant to note that tariff reductions offered by Canada, the United States, and Mexico (and Chile and Israel) in the WTO context will have the effect of reducing the tariff preferences enjoyed in each others markets which were obtained through NAFTA and the other bilateral free trade arrangements. As far as non-tariff barriers are concerned, all of the WTO Agreements relating to these goods issues will be on the table. The objective with respect to these will be to identify areas where the present rules are lacking, develop understandings as to how they might be improved, and seek to bring about better rules and commitments to enhance and govern trade between WTO members.

The following sections of this Chapter will review the tariff and non-tariff agreements now in place, their coverage, and unresolved issues and the possibilities for new negotiations in the next WTO round. It is important to note that any of these agreements or certain aspects of them may be identified by member countries for possible inclusion on the agenda for the forthcoming round. It is also significant to note that the Committee was struck by the very few submissions it received from Canadians that identified specific tariff or non-tariff barriers that they wished to see eliminated by other countries or retained by Canada. To some extent this is probably due to the fact that the major tariff and non-tariff barriers that impact on Canadian producers have been dealt with through NAFTA. In fact, however, many of the bilateral issues that arise between NAFTA partners may have their solutions within a broader WTO context. The Government has requested direct input from interested parties in this area and we can only stress the importance of private sector involvement in a timely fashion so that our negotiators are prepared to advance positions and

respond to requests received from other countries throughout the WTO negotiation.

Tariffs

Tariffs will be a significant element in the negotiations as member countries seek to further reduce their impact on trade flows. In this connection, the domestic process involves Canadians identifying which tariffs and non-tariff barriers in foreign countries are impeding current or future access to those markets for our goods. The process also requires an examination of Canada's tariffs and other border measures that might be reduced or removed: to first, pay for concessions obtained from our trading partners and second, reduce the cost of imports for both Canadian consumers and domestic firms that use them as inputs in their production.

It is important to situate the tariff within the context of the international trading system. Originally, the tariff was established in most countries as a mechanism for governments to raise funds. Little attention was given to their possible adverse effects on economic growth or competitiveness. While the policy makers were aware of the protective effect of the tariff, policy was directed primarily to ensuring that Canada produced as much as possible of what we consumed, exported as much as we could to other countries, and imported only essential goods that had to be obtained from abroad. All countries more or less behaved in much the same manner. Indeed, similar arguments are heard today from certain industrial sectors, especially in the United States, in spite of the wealth of evidence attesting to the economic benefits that flow from freer trade.

The GATT was created to try to bring some order to the international trading system. It was originally negotiated between 23 countries and, as might be expected, was not comprehensive in its coverage, nor did it anticipate globalization or many of the developments in world trading arrangements evident today. As conceived initially, it focussed only on trade in goods. Its

original Articles, and the early negotiating conferences, reflect that preoccupation as they were concerned mainly with reducing and removing tariffs.

The original tariff item-by-tariff item negotiations were laborious and slow. They were based primarily on what was referred to as the “request and offer approach” in which each country would table its request lists of tariff reductions that it wished to obtain from other countries and the other countries would, in turn, put forward their offer list in response to the requests that they had received. In the 1960s, efforts were made to find a more efficient and effective process. This resulted in the “formula” or “across the board” approach in which countries agreed to a general reduction objective and negotiated exemptions from this goal. This, combined with the advent of the computer, facilitated tariff negotiations in the Kennedy and Tokyo Rounds. The Uruguay Round was a mixture of the two, since the U.S. rejected the formula approach.

Tariff negotiations do not, for the most part, involve representatives from a whole group of countries sitting down at a table and negotiating tariff reductions together; rather they involve a series of bilateral negotiations, the results of which are made available to all WTO members via the Most Favoured Nation (MFN) principle. As a result, the WTO system enables smaller countries to escape the need to balance trade bilaterally and increases their negotiating leverage by joining forces with like-minded countries to achieve specific objectives.

Leverage in the system was, and still remains to a considerable extent, a function of the economic power of individual WTO members. This is due to the fact that the system’s ultimate sanction is the ability of a state to withhold foreign access to its market. Likewise, a willingness to open one’s domestic market is the negotiating coin used to obtain trade concessions from others. In such negotiations, small countries individually are at a

disadvantage in relation to the large powers. They do, however, thanks to the MFN rule, receive the benefits of concessions negotiated between the larger powers — benefits which they would otherwise be unable to afford or achieve.

It is anticipated that smaller countries, especially the developing countries, will play a much larger role in the forthcoming WTO negotiation than they did in the past. One of the most important accomplishments of the Uruguay Round was its acceptance by all member countries as a single undertaking so that all members automatically participate in all of the multilateral agreements and are bound by their legal frameworks. This alone is a major step in reducing uncertainty for business in the conduct of international trade. There can be little doubt however, that the developing countries will use their enhanced status within the WTO to focus their efforts in these negotiations on removing obstacles to trade in those sensitive sectors, textiles and clothing for example, where they have a comparative advantage. Moreover, they will be seeking removal of the remaining tariffs against their products that they ship to developed countries. As active and full participants in the negotiation process, they will be looking for significant overall benefits in terms of better access to developed country markets for all of their exports, and support from the developing world may be crucial to achieving overall agreement at the end of the day.

The Uruguay Round was by far the most comprehensive and difficult negotiation ever undertaken in the GATT. It resulted in the largest reduction in tariffs on industrial and resource products ever achieved in a negotiation (close to 40%), in new approaches to tariff reductions and their elimination such as in the telecommunications sector, in the integration of regional trade arrangements, and in non-tariff barriers being reduced or eliminated across the entire spectrum of trade in goods. The Uruguay Round Agreement on Agriculture brought this sector more fully under the rules of the GATT by reducing overall tariffs on agricultural goods by

36%, by ensuring that member countries opened their markets to imports, by reducing internal supports to their agricultural industries, and by reducing export subsidy expenditures in order to reduce the volume of subsidized exports.

A significant feature of the market access deal was agreement by the world's key trading countries to completely eliminate tariff barriers in industrial sectors covering paper (from pulp of all forms of paper articles), steel, pharmaceuticals including finished medications of all forms, construction equipment, agricultural equipment, medical equipment, office furniture, toys, and whiskies, brandies and beer. Concessions were also made in other areas. In electronics, the result was reductions in excess of 50% in some markets and agreement was reached on harmonizing tariff levels for chemicals and plastics. For most products covered by the negotiation, the reductions were to be implemented within a five-to-ten-year time frame.

Specifically, the Uruguay Round was the largest market access package ever agreed, and it was only concluded after seven years of negotiations among 117 countries. Overall, the WTO estimated that the Round resulted in higher levels of tariff bindings on industrial products from 78% to 99% in developed countries and from 22% to 72% in developing countries; coverage of most agricultural products because of tariffication and bindings; a 38% overall reduction in developed countries tariffs on industrial products from 6.3% to 3.9%; an increase from 20% to 43% in the value of imported industrial products that receive duty free treatment in developed countries; and considerable progress in reducing tariff escalation.

Since the conclusion of the Uruguay Round there have been new agreements on tariffs relating to sectors such as basic telecommunications equipment, and tariffs were an integral part of the new agreements signed between Canada and Chile and Israel. Moreover, the APEC countries are pushing for tariff-free trade between them by 2010–2020; the Free Trade Agreement of the

Americas (FTAA) has tariff-free trade as an objective for the year 2005 and Mercosur in Latin America is building momentum to expand its sphere of tariff-free trade. On the domestic front, a major effort was undertaken last year by the Department of Finance to simplify the Canadian tariff structure by drastically reducing the number of tariff items as a means of facilitating the import process for Canadian business. In this regard, a key function in the process of tariff negotiations is to ensure that appropriate domestic sectoral policies are in place and that their objectives are reflected in Canada's strategic approach in multilateral and regional tariff discussions.

Accordingly, tariffs are still regarded by many as being very important within the overall scheme of the multilateral trading system and it can be expected that they will attract considerable attention from our trading partners in the upcoming round. Most spokespersons who addressed this issue before the Committee, especially from the agriculture sector, strongly recommended that Canada give top priority in the negotiations to improved access and tariff removal in foreign markets for Canadian products. In the Committee roundtable on March 11, 1999, William Miner, referring to the oilseeds sector, noted that zero-for-zero treatment is being promoted as a goal. He urged Canada to pursue the same objective in the cereals and red meat sectors. One of the reasons behind Canada's strong trade performance is the tariff liberalization that resulted from WTO Agreements and NAFTA, which leveled the playing field and opened new markets for Canadian firms. While our current focus may be directed primarily to the American market, Canada does have a vital stake in other world markets, especially the European Union and Japan, which must be protected. Barrier free access to these markets must be a clear objective for the next WTO round. As such, Canada's negotiators will need to be in a position to identify with some precision where Canadian industry wishes to seek improvements and what we might be willing to give up to pay for them.

Non-Tariff Barriers

Market access negotiations related to trade in industrial goods including fish, at the multilateral level, will deal with non-tariff measures (NTMs) as well as tariffs. In the context of WTO industrial goods market access negotiations, non-tariff measures generally refer to policies that restrict or prohibit imports (including through quantitative restrictions, tariff quotas, and import licenses); impose variable levies, surcharges or discriminatory taxes on imports; require prior import deposits; subsidize production and exports; and/or restrain exports. There is a variety of specific NTMs within each of these broad categories. A non-tariff measure can be applied in tandem with tariffs and/or other NTMs.

It is not always easy to identify NTMs or be certain of their purpose. It is generally agreed, however, that NTMs can have many different effects (including price, quantity, and social welfare impacts) in both the importing and exporting country. NTMs can impair or nullify the effect of agreements to make binding commitments to reduce or eliminate tariffs. That said, these impacts can be difficult to quantify, even in situations where the measures are transparent. NTMs have a major impact on trade, and in overall terms, the economic gains from their liberalization may far exceed those from reducing or eliminating remaining tariffs — particularly as trade negotiations increasingly broach areas that have traditionally been viewed as being in the purview of domestic policy. Canadian market access objectives for any future non-tariff negotiations will need to be based on as accurate information as possible on non-tariff measures that limit access for Canadian products and the potential advantages and disadvantages likely to flow from their reduction and/or elimination. The Uruguay Round did not, and could not, resolve all the problems in this area and internationally recognized disciplines are essential to ensure that current and potential NTMs are contained.

Import Restraints

The approach adopted for dealing with NTMs in the Uruguay Round was to identify barriers and bring them into the scope of multilateral negotiations, strengthen the rules governing their use, develop surveillance mechanisms to enforce compliance, and offer improved dispute settlement procedures. One result was the conversion of many NTMs in **agriculture** to tariffs (a process known as *tariffication*), and some agricultural NTMs were also eliminated. In most cases, the tariffication process involved the introduction of tariff rate quotas (TRQs) which provide for imports up to specified access levels to be assessed with one rate of import duty. Imports above that level are charged a higher, more restrictive duty. NTMs that were specifically covered in the WTO Agreement on Agriculture include quantitative restrictions, variable import levies, minimum import prices, discretionary licensing, non-tariff measures maintained through state-trading enterprises, and voluntary export restraints (VERs). The Agreement on Agriculture also improved the transparency of rules in this sector.

Import restraints on exports of **textiles and clothing** are now being progressively phased out under the WTO Agreement on Textiles and Clothing. Subject to special safeguards, the phase-out of the Multi-Fibre Arrangement (MFA), and the gradual integration of the textiles and clothing sector into the normal WTO rules, is being done over a 10-year period under the supervision of a Textiles Monitoring Board (TMB). It is likely that the developing countries will wish to revisit this Agreement as part of the agenda for the new round.

Uruguay Round Agreements

Other areas specifically addressed by the market access negotiations in the Uruguay Round that will be subject to review in a new round include: **safeguards, anti-dumping practices and subsidies and countervailing measures; technical barriers to trade (TBTs) and sanitary**

and phytosanitary (SPS) measures; import licensing; customs valuation; preshipment inspection, rules of origin and government procurement. Short summaries of each of these agreements are attached as an Appendix to this Chapter.

Subsidies and Countervailing Measures

Disciplines on the use of subsidies are covered by the WTO Agreements on Subsidies and Countervailing Measures and on Agriculture. These rules distinguish between domestic and export subsidies and provide for differential treatment for agriculture. Some subsidies are prohibited (such as export subsidies, with the exception of the case of agriculture), while others are “actionable” or “non-actionable”. The use of subsidies that affect trade, especially in agriculture, will clearly be on the table for discussion in the new round, as will the special rules that apply to “non-actionable” subsidies. The Alberta Forest Products Association recommended that Canada give priority to pursuing clearer definitions of which subsidies are countervailable and which are not, to ensure that the U.S. lives up to its obligations under the agreements.

Safeguards

Safeguards are temporary trade measures applied by a Government on an emergency basis against increased imports of a particular good that is causing, or threatening to cause, serious injury to its domestic industry producing like or directly competitive products. Safeguard actions must comply with the requirements of Article XIX of the GATT 1994 and the Agreement on Safeguards. Canada and the United States agreed in Free Trade Agreement (FTA) to exclude each other from global safeguard actions under GATT Article XIX unless imports from the other Party were “substantial” and “contributing importantly” to the serious injury or threat thereof caused by increased imports. This FTA standard was essentially carried over into the NAFTA.

The Committee was informed that WTO safeguard actions have so far had little impact on Canadian exports. Canada did, however, intervene in the U.S. International Trade Commission’s recent safeguard investigation in respect of wheat gluten and the Australian Productivity Commission’s investigation in respect of pigmeat, neither of which resulted in the application of safeguard measures against imports from Canada. Canada has not taken any safeguard measures since the WTO Agreement came into effect. It is expected that the implementation of this Agreement will be subjected to examination in the course of the forthcoming round and that incremental changes to further strengthen or clarify its application will likely be brought forward for consideration. The Committee was informed that the Government is closely monitoring current safeguard disputes.

The Anti-Dumping Agreement

The Anti-dumping Agreement is by far the most used of the three WTO trade remedy agreements. The Agreement provides an exception to the WTO basic principles by allowing member countries to impose anti-dumping duties against imports from specific countries when goods are dumped (sold to an importer at a price less than they are sold in the exporter’s home market) and are causing injury to the domestic producers in the importing country. The Agreement was examined in the Uruguay Round and some relatively minor improvements in the rules were agreed. The Agreement will almost certainly be reviewed again in a new round since a number of issues, mainly concerned with interpretation, must be examined. These include sampling methods, content of preliminary determinations, treatment of confidential information, disclosure, hearings, and circumvention. There is also growing concern being expressed about the increased use of anti-dumping measures generally, and especially as a possible mechanism for providing new protection.

Technical Standards and Phytosanitary Measures

The Technical Barriers to Trade Agreement (TBT) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) are closely related, with the latter focusing on measures designed to protect human, animal, and plant life as provided for in Article XX of the GATT. The TBT Agreement concerns the development and application of standards that affect trade. Under both Agreements, regulations can impact both domestic and international trade. The TBT recognizes the right of countries to establish their own standards, but requires that members not apply their national standards more rigorously to imported products than to domestic products. The SPS differs from the TBT to the extent that the MFN principle does not apply but requires that measures not be applied in a way to create arbitrary or unjustifiable discrimination between countries where identical or similar conditions prevail. Further, the SPS incorporates a primary obligation to the effect that measures be based on scientific principles.

As noted in Chapters 3 and 4, over the past few years a number of issues such as the use of hormones in meats, genetically modified organisms, and the requirements relating to the use of scientific data under the SPS Agreement have been subjected to a number of criticisms. The Canadian Federation of Agriculture recommended that Canada work to eliminate unjustified SPS and other non-tariff measures including clear-cut agreements on inspection standards and the prevention of sudden standards changes. The Canadian Pork Council requested that Canada work for transparent and predictable procedures so that countries cannot use unjustified SPS barriers to limit imports. This view was echoed by William Miner, who stated that the rules relating to health, sanitary, environmental, and technical standards should be clarified to avoid their use as effective trade restrictions. International discussions will also likely be

required to develop acceptable systems of mutual recognition on standards as between countries. In the circumstances, it is expected that both of these Agreements will be subject to a detailed review in the new round.

Border Measures Agreements

It is unlikely that the Customs Valuation Agreement NBP¹ or the Preshipment Inspection Agreement will attract much attention in the forthcoming round, although issues concerning technical co-operation to assist developing countries with their implementation may arise. The current WTO Agreement on Rules of Origin only deals with non-preferential rules. Future negotiations could include a discussion of preferential rules and give effect to the work taking place in this area in the Customs Cooperation Council. Tariff classification issues are not usually a subject for multilateral negotiations. However, given that tariff classification can make a major difference to the rate of duty applied, and given recent experience on this front, especially in respect of the treatment of Canadian lumber and wood products entering the U.S. market, consideration might be given to exploring new ways of dealing with these problems.

A number of other charges may also be applied to imports. Some of these reflect fees for services rendered (stevedoring and port handling charges, for example). Additional charges may also include customs processing fees and consular charges. WTO rules (GATT Article VIII: Fees and Formalities connected with Importation and Exportation) allow the imposition of some of these charges provided they are "limited in amount to the approximate cost of services rendered and shall not represent indirect protection to domestic producers or a taxation on imports for fiscal purposes." Despite a WTO Dispute Settlement Panel ruling against a U.S. practice of charging *ad valorem* fees, some countries continue to set some charges as a

¹ Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

percentage of the value of imports, in contravention of WTO rules.

The WTO Agreement on Import Licensing Procedures sets out the conditions under which import licensing may be implemented and stipulates the procedures which should be followed if, and, or when applied. When licence requirements are applied on a discretionary basis the result can be increased costs and uncertainty for traders. This problem can be exacerbated by a lack of transparency, which facilitates the subjective application of administrative procedures.

Government Procurement Agreement

A review of the operation of the Government Procurement Agreement is underway with a target date for completion of October 1999 and obviously it will be dealt with in the context of the new round. Historically, most governments placed procurement contracts with their domestic industry. Procurement was not viewed as a major issue on the international trade agenda until the late 1970s. During the Tokyo Round, the first steps were taken and resulted in the GATT Procurement Code. The Code was separate from the GATT and had limited coverage and membership, mostly developed countries. During the Uruguay Round, a new WTO Agreement on Government Procurement (AGP) was reached and came into force on January 1, 1996. Like the previous Code, participation in the AGP is optional and so far limited. Canada has been a leader in international procurement negotiations and is an active member of the new AGP.

The AGP identifies specific public entities covered and establishes financial thresholds applicable to contracts for products, services, and construction services e.g. purchases of goods and services over SDR 130,000 (\$254,100.00) by national government departments and agencies, and purchases of construction services over SDR 5 million (\$9.7 million). Generally, Canada's support for negotiations in this field has been based on the view that we have much more to gain

from access to the very large government procurement markets of the major trading nations such as the United States or the European Union, than we might have to give up in our own domestic market. This Agreement provides access opportunities for Canadian exporters and service providers to bid on contracts, estimated to be in excess of \$250 billion per annum, with governments in major international markets.

Because membership in this Agreement is limited (26 of 134 Members of WTO) at the present time, its expansion in both membership and product coverage may provide one of the major areas in which better access to foreign markets can be achieved for Canadian suppliers. The main issue will be how far developing countries are prepared to go in this area. Many of the non-AGP participants (most developing country members for example) regard their domestic procurement markets as crucial to local economic development. Indeed, many of these countries fear that open competition from world suppliers would undermine the ability of their relatively small domestic industries to supply even the limited market they now serve. Perhaps more important from the perspective of these countries is the fact that they do not see themselves now or in the foreseeable future as being in a position to supply product in any substantial amounts to foreign governments. Thus, they see little benefit in becoming signatories. Canadian industry should make every effort to identify potential markets that might be tapped under an expanded procurement agreement.

At the same time, the Government must also be sensitive to the concerns that were expressed to the Committee about the potential impact of procurement liberalization negotiations on sectors within Canada, particularly in certain core areas of public services delivery—notably health and education—which have been vulnerable to privatization and funding cutbacks in recent years, and which also fall within provincial and local government jurisdiction. In addition to identifying Canadian export opportunities into other markets, it will be equally important to

ensure that a balanced result is achieved which continues to protect the Canadian public interest in health, education, and social-sector services.

The extension of AGP coverage to sub-federal governments in federal states clearly enters terrain in which the Government will have to tread carefully in closer consultation with provincial and municipal authorities. All AGP member countries other than Canada have made commitments to open their markets to suppliers from other countries for certain procurements of federal government departments, sub-central (provincial, state, municipal) government departments, and Crown corporations. In the Uruguay Round, the Canadian Government offered to cover sub-federal government entities and enterprises in all ten provinces on the basis of commitments received from the provinces. This position was also linked to achieving increased market access in sectors of principal interest to Canadian suppliers, and improved security of market access through circumscribing the use of small business and other set-aside exceptions in the Agreement, especially in the United States.

Because of U.S. reluctance to agree to the latter and as no commitments have been received from the provinces, Canada has limited its coverage under the Agreement to federal departments and agencies. Canadian provincial, municipal or regional governments are not included. Clearly, this issue will be raised by other WTO members in the forthcoming negotiation and provincial government participation will be required. It is also relevant to note that this issue was raised before the Committee by several municipal councillors in British Columbia and in a subsequent submission from the Union of British Columbia Municipalities. Lyle Fenton, Councillor for the District of Squamish, noted that there has been no involvement of municipal governments in these negotiations, even though their impact will be felt at the local level. In his view, the federal government has a responsibility to consult municipal governments and ensure that they have adequate financial resources to study

the implications for them before entering into agreements or undertakings. (*Evidence, Meeting No. 121, April 27, 1999, Vancouver*)

There are two primary difficulties in the non-tariff barrier field facing countries in the run-up to the WTO negotiations. First, the negotiations will deal with current NTMs. As indicated above, even in the event of a standstill agreement, there is considerable scope for governments to introduce new measures that adversely affect trade in goods. Second, NTMs are no longer primarily border measures. As such, issues will increasingly revolve around the impact of international agreements on the sovereign right of countries to establish domestic laws, policies, and practices to deal with what might be regarded as essentially domestic matters.

Negotiations related to NTMs in the new round will focus on further rule making and improving market access through commitments to eliminate or relax NTMs. They can also be expected to involve improving the disciplines on measures already covered by existing rules. At this stage it is not clear how the process relating to the negotiation of NTMs will proceed. The first step could involve an evaluation of the effect of specific categories of NTMs, and the identification of those that inhibit trade. This could be followed by the selection of priority NTMs to subject to negotiation. One might envisage a further step in which a framework and principles for the elimination and/or reduction of the selected NTMs could be developed, or for the identification of NTMs that could be subject to agreed disciplines, or to rules which set out the conditions under which they may be utilized. This could also include provisions to enhance transparency.

Views of the Private Sector

In overall terms, the Alliance of Manufacturers & Exporters Canada spoke for many industry witnesses in emphasizing that a rules-based international trading system with a level playing field where both the purchaser and the vendor

know what they are dealing with is the best approach to multilateral trade and that the Millennium Round should be directed towards the greater liberalization of trade in goods, services, and investment. (*Evidence*, Meeting No. 95, March 4, 1999) In their view, remaining tariffs should be reduced or removed as soon as possible and customs clearance and documentation be made less troublesome. The Alliance identified an agreement on telecommunications and information technology as a priority. (*Evidence*, Meeting No. 103, March 22, 1999) While the Committee received relatively few specific recommendations on market access, some significant points were raised by other witnesses.

Gerry Fedchun, of the Automotive Parts Manufacturers' Association suggested that the government should pay more attention to NTBs than to tariff barriers in the next round, noting that quota systems, duty remission schemes, bureaucratic entanglement, immigration/entry restrictions, and transportation bottlenecks can do more to deter increased trade than a customs duty which is a known quantity. (*Evidence*, Meeting No. 122, April 27, 1999, Toronto) IBM proposed that Canada follow the fundamental objective of "maximum trade liberalization in the shortest time possible" and encouraged the government to consider the entire package of goods being traded when looking at tariffs. In this connection, they noted that the company's shipments of duty free components are hampered when a tariff is imposed on the containers to ship these products. (*Evidence*, Meeting No. 99, March 16, 1999)

Dan Gagnier, Alcan Aluminium Ltd. requested that the 6% duty on aluminium levied by the EU be removed, (*Evidence*, Meeting No. 122, April 27, 1999, Toronto) an item that was also identified by Canada's Ambassador to the EU. (*Evidence*, Meeting No. 136, May 13, 1999) He argued that the tariff is not in the best interest of the aluminium industry or its European customers. Joel Neuheiner, Canadian Pulp and Paper Association, requested that the current agreement providing for zero tariffs on pulp and paper

products by January 1, 2004 be accelerated to January 1, 2000 and that it be expanded to other key trade partners such as China, India, and Latin American countries. (The Agreement currently includes Canada, the U.S., Japan, New Zealand, Korea, Hong Kong, Singapore, and the European Union). He also asked that Canada seek to clarify or, if necessary, strengthen obligations under the TBT, which he suggests are currently subject to a wide range of interpretation. The CPPA is opposed to creating new barriers to trade but does not object to environmental labels and standards as long as they are developed and used in a fully transparent, non-discriminatory fashion and according to proper and sufficient scientific evidence. (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver)

The Alberta Forest Products Association noted that in Asia, tariffs and other import restrictions play a prominent role in inhibiting expansion of forest product exports. Canadian spruce, pine, and fir lumber still faces a 4.8% tariff in Japan which places Canadian exporters at a disadvantage to their Japanese counterparts who, in many cases, import the raw logs free of duties. (*Evidence*, Meeting No. 124, April 28, 1999, Edmonton) G. Shannon suggested that Canada should be seeking zero tariff levels for forest products and certain minerals in this new round of negotiations. (*Evidence*, Meeting No. 123, April 28, 1999, Toronto)

The Canadian Steel Producers' Association recommended, among other things, that all steel tariffs should be frozen and reduced to zero by 2005 and that all non-tariff barriers likewise be frozen and gradually removed. (*Evidence*, Meeting No. 101, March 16, 1999) Donald Belch, from Stelco Inc. argued that since North American steel markets are open, unfair trade laws (anti-dumping) must be responsive to protect the industry on both sides of the border which suffers due to dumping caused by an oversupply of steel from overseas. He also noted that since tariff reductions under the Uruguay Round Multilateral Steel Accord (MSA) were limited — with only Canada, the U.S., the EU, Japan and Korea

participating — it may be difficult for Canada to negotiate meaningful changes in the WTO for the steel sector now that its major bargaining chip has been used. He added that steel supply to U.S. markets needs to be free of all restrictions and Canada should ensure that the WTO dispute resolution process does not get bogged down. (*Evidence*, Meeting No. 123, April 28, 1999, Toronto)

The Fisheries Association of Newfoundland and Labrador advised the Committee that fish is almost exclusively an export product and, as such, seafood tariffs are a major concern for Canadian producers. They referred specifically to the tariffs and tariff preferences maintained by the European Union as being areas that should be given priority attention. They also recommended that Canada seek improved access for value-added fish and seafood products in Pacific Rim and Latin American countries. (*Evidence*, Meeting No. 103, March 22, 1999) In this regard, Canada's Ambassador to the EU, Mr. Jean-Pierre Juneau, noted that the fish tariff problem is compounded by the preferences granted by the EU to Norway and Iceland that distort normal commercial activity. On northern shrimp, some exporting countries pay no duty, while Canadian shrimp exporters face a 20% EU tariff. This year, Canada succeeded in convincing the EU to establish a reduced-tariff quota for cooked and peeled shrimp at 6% instead of 20%. But this quota is limited in quantity (4,000 metric tonnes) and must be used between April 1, 1999 and March 31, 2000. He suggested that a longer term solution is required. (*Evidence*, Meeting No. 136, May 13, 1999)

McCain Foods argued that Canada must attain better market access for their exports, as many countries still impose high customs tariffs. Non-tariff barriers must also be reduced, including arbitrary or changeable standards as well as SPS measures, so McCain export sales can achieve their full potential. It referred to Canada's asymmetrical trade policy that attempts to maintain market access barriers for dairy and poultry supply managed commodities while, at the

same time adopting free trade for downstream food processors, as creating policy problems for firms in the food processing industry. The company argued for rationalization and an orderly transition to more open Canadian market access for foreign poultry and dairy products. (*Evidence*, Meeting No. 109, March 25, 1999)

Culture is, of course, the subject of a special chapter of this Report. Nonetheless, issues relating to market access are very much in the forefront of the debates on this subject. In his presentation to the Committee, Professor Keith Acheson of Carleton University suggested that "the industrial policy component of an agreement for cultural industries should be similar in principle to those governing trade and investment of other goods and services ... The reciprocal opening of markets will not be achieved if the scope to pursue cultural policy is not appropriately constrained... Mutually beneficial disciplines can be achieved only if a restriction in one instrument, say subsidies, cannot be opportunistically evaded by altering others, such as increasing tax credits." (*Evidence*, Meeting No. 96, March 9, 1999) Mr. Dennis Browne, Director of the Centre for Trade Policy and Law, argued on the other hand that the physical trade aspects of cultural products are significantly different than those of other goods and, as such, there is a strong basis for claiming that trade rules on cultural products be different than those applied to other goods. (*Evidence*, Meeting No. 96, March 9, 1999)

Canada's Ambassador to the EU, Mr. Jean-Pierre Juneau, made a number of important observations concerning access to the EU Market when he appeared before the Committee. While much of his comments were directed to the problems of two-way trade in agricultural sector including the issues of export subsidies, market access, and domestic support in the face of budgetary and EU expansion pressures, he noted that the EU would also be pressing other issues. These include the strengthening of the multilateral system, a further reduction of import tariffs and non-tariff restrictions, a higher level of liberalization for

services worldwide, a transparent framework of international rules on investment consistent with sustainable development, an international framework for competition policy including enforcement mechanisms and transparent and non-discriminatory procurement practices.

With regard to industrial tariff reductions, the EU has advanced two options. The first is an approach combining the use of tariff bands within which all members will be obliged to fix their tariffs with a maximum overall simple weight average tariff. The second is a differentiated duty approach combining maximum tariff rates per tariff line with maximum simple weight overall averages. For example, the maximum tariff rate of 7% for specific products provided that the average rate for a group of products does not exceed 5%. Both alternatives would be differentiated between developing and less developed countries. Apparently, the EU Commission stresses the importance of defining an approach that could be implemented with no specific exemptions for certain products. The Commission is also strongly encouraging developing countries to support industrial tariff negotiations in their own interests.

The Ambassador Jean-Pierre Juneau noted Canada has certain specific tariff interests that should be addressed in this round, including our access on fish products, value added forest products, and non-ferrous metals. Overall, he observed that Canada is one of the few countries, along with the U.S., Japan, and Australia, which does not benefit from some preferential access to

the EU market. The occasion of the new round could be used to reduce this disparity for a number of products that we export to the EU and to regain some of the access to various countries (such as the United Kingdom) that was lost on their joining the EU. This applies to products such as wheat and cheeses, and other products such as wines and canola.

Conclusions and Recommendations

Given the size of Canada's market and population, the Committee concludes that Canada must rely heavily on foreign markets for our continued growth and prosperity. In an interdependent globalized world economy, goods and services trade is closely linked to foreign investment flows, access to new innovations, ideas and technology, and the movement of individuals and management skills. An increase in goods trade is usually accompanied by increased trade in related services and investment, particularly in the high-technology sector and services sectors. A new round of WTO talks has the potential to open new and expanded opportunities for Canadian business in all of these areas of economic activity. As such, the first priority in the new WTO round must be to seek improved access to world markets for all Canadian goods and services and improve access to high technology and knowledge-based products, innovations, and services which will enhance the productivity and competitiveness of Canadian industry to better position and serve world markets.

Recommendation 17

The Government, in close consultations with the business community and provincial governments, should identify as quickly as possible those markets, products, and trade barriers that Canada should target for improved access negotiations in the next round.

The major countries from which Canada will be seeking concessions in the new negotiation are in favour of a broad-based negotiation. While tariff issues with our principal trading partner, the United States, are mainly covered by NAFTA, non-tariff issues, services, agriculture and the new

issues will figure predominantly in these bilateral discussions. In the EU and Japan, Canadian exporters continue to face formidable tariff and non-tariff barriers to goods and services, as they do in other developed and developing countries. It appears to the Committee that the ingredients

for a broad-based round of WTO negotiations are present and, in our view, this approach offers the

best possible avenue for Canada to achieve a balanced outcome in the negotiations.

Recommendation 18

Since, in the Committee's view, a broad-based round of WTO negotiations appears to offer the best approach for Canada to achieve a balanced outcome in the negotiations, the Government should work towards reaching a consensus in this regard within the WTO.

Specific tariffs of other countries that are adversely affecting Canada's ability to export to these markets must be identified and their reduction or elimination pursued with vigor during the negotiations. At the same time efforts must be intensified, in cooperation with domestic industry and other stakeholders, to establish items on which reductions in the current level of the Canadian tariff can be offered in return for lower tariffs on exports. In this context, Canadian exporters now enjoy preferential tariff access to the United States, Mexican, Chilean, and Israeli markets as a result of NAFTA and bilateral agreements. If these countries agree to reductions in their MFN tariffs with the rest of the world in a WTO tariff negotiation, the result will be a reduction in Canada's tariff preference in these markets. These reductions should be identified

and taken into account in assessing possible benefits that might accrue from better access to other markets. As we approach the Seattle Ministerial Conference, Canada must begin, in cooperation with the Canadian export community, to fine-tune our negotiating objectives relative to our major trading partners including the United States, the European Union and Japan. Because the European Union is our second most important trading partner, accounting for Canadian goods exports of more than \$15 billion last year and as our trade with the United States is primarily governed by NAFTA, the European Union will be one of Canada's most important negotiating partners in the new round. Fish and seafood, wines, non-ferrous metals, and wood products should be given particular attention in this context.

Recommendation 19

The Government should, working closely with Canadian exporters, focus its tariff and non-tariff goods negotiations in the next WTO round on our major trading partners including the United States, the European Union and Japan, with particular attention to fish and seafood, non-ferrous metals, wines and wood products.

It is anticipated that the developing countries will be seeking in the negotiation as much free access as possible to the markets of developed countries, including Canada. Indeed, at the recent WTO Symposium on Trade and Development the former Director General and a number of other participants requested that developed countries provide duty-free access for all export products of the least developed countries. The Committee did not receive representations from firms involved in

production of goods normally thought of as import-sensitive vis-à-vis developing countries. These firms will need to be canvassed for their views prior to the Government taking definitive negotiating positions in respect of these products. However, in principle, the Committee is generally supportive of the views it received calling for Canada to open its markets to aid in the development process.

Recommendation 20

The Governments should undertake early consultations with Canadian firms producing developing country import-sensitive products, especially goods from the least developed countries, with a view to providing improved access to the Canadian market for these goods.

All of the non-tariff agreements referred to in this chapter are potentially subjects for negotiation. As a relatively small country, Canada must continue to rely on the WTO rules-based trading system as the primary mechanism for protecting its international trade interests. Thus, Canada's goal in the non-tariff negotiations should be to ensure that existing WTO Agreements are clarified where necessary and made as transparent as possible.

Bilateral and regional trading arrangements should be fully consistent with the trade rules negotiated within the WTO and any new agreements concluded relating to the new issues should likewise be clear, precise, and free from ambiguity. These issues should be approached in full cooperation with provincial governments as necessary with a view to ensuring their effective implementation in Canada.

Recommendation 21

The Government should be well prepared to enter into negotiations respecting all of the goods related non-tariff agreements; moreover, Canada's participation in these discussions should be closely coordinated with the provinces to ensure that, where necessary, any undertaking agreed upon can be effectively implemented.

APPENDIX 5A: SUMMARY OF NON-TARIFF BARRIER URUGUAY ROUND AGREEMENTS

Agreement On The Application Of Sanitary And Phytosanitary Measures (SPS)

Prior to the Uruguay Round, sanitary and phytosanitary measures were dealt with as far as possible under the GATT Agreement on Technical Barriers to Trade (TBT). This did not permit countries to apply discriminatory measures in order to protect human, animal, and plant life as provided for in GATT Article XX. The SPS Agreement defines the international rights and obligations of member countries to develop and apply sanitary or phytosanitary measures. Such measures can include laws, regulations, procedures, risk assessment methods, and packaging and labeling requirements related to food safety. They are intended to control the spread or importation of plant or animal borne pests or diseases and to control the presence of additives (e.g. food colorings), contaminants (e.g. pesticide residues), toxins or disease causing organisms in foods, beverages, or feedstuffs.

While the SPS Agreement contains many provisions that are similar to the TBT Agreement, including the right of each country to determine its appropriate level of protection, it incorporates two important differences. First, the MFN principle does not apply. Rather, the SPS Agreement provides that the measures adopted shall not be applied “in a way as to create arbitrary or unjustifiable discrimination between countries where identical or similar conditions prevail.” The rationale for the difference in the rules is that because the SPS Agreement is designed to prevent entry or spread of pests or disease, countries may apply higher standards to imports from countries where diseases affecting plant or animal life are prevalent and be less rigorous on imports from countries where such

diseases do not exist. The second is the primary obligation in the SPS Agreement for the measures adopted to be based on scientific principles. The SPS Agreement, however, permits countries to adopt provisional SPS measures even if the scientific evidence is insufficient or inconclusive to support the action and it enables countries to take precautionary measures where there is scientific uncertainty pending the development of definitive data.

Agreement on Technical Barriers to Trade (TBT)

The TBT Agreement relates to the development and application of “standards” that affect trade. It is intended to ensure that technical regulations, standards, and related testing and certification procedures and requirements imposed by countries for the protection of human health and safety, animal or plant life, or the environment are applied on imports in a way that does not create unnecessary barriers to trade. While recognizing the fundamental right of each country to establish its own standards, the Agreement provides that countries cannot apply their national standards more rigorously to imported products than to like domestic products (national treatment) and that the MFN principle must be applied as between imports of like products from different sources. The Agreement includes transparency and advance notification provisions, gives countries an opportunity to comment on draft standards, and provides foreign producers with effective access to domestic certification systems. It does not, however, allow any one country to impose unilaterally its values and standards on other countries.

The TBT Agreement was strengthened in the Uruguay Round to include environmental protection as a legitimate objective of standards,

require member countries to notify technical regulations of local governments within their jurisdiction, and incorporate processes and production methods related to products in the definition of technical regulations and standards. The TBT seeks to prescribe that countries should, as far as possible, base their national mandatory regulations on international standards. In the absence of such standards, they should be based on “available scientific principles and technical information” and should be no more restrictive than necessary to fulfill legitimate objectives. An integral part of the Agreement is a separate code of good practice covering the preparation, adoption, and application of standards by national standardization organizations of member countries

Agreement on Subsidies and Countervailing Measures (SMC)

The SCM Agreement builds on the Tokyo Round Agreement, which was mainly concerned with the application of countervailing duties. Essentially, the new Agreement is intended to reduce or eliminate the adverse effects of subsidies on international trade. It contains for the first time an internationally agreed definition of subsidy. It establishes three categories of subsidy practices, namely: prohibited, actionable, and non-actionable. The prohibited category includes subsidies contingent on export performance, or requiring the use of domestic over imported goods. The non-actionable category can include subsidies for regional development, environment, and research and will not attract countervailing duties provided they are administered in a way that is consistent with the prescribed criteria set out in the Agreement. This provision is to be reviewed by the year 2000. The actionable category encompasses those subsidy practices which are believed to cause “serious prejudice” to the interests of another Member and these can be subject to countervailing duties.

The right to protect domestic industries from unfair competition resulting from subsidized imports that are causing or threatening injury to

the competing domestic industries is continued in the Agreement. Thus, countries are permitted to impose countervailing duties to offset the amount of a subsidy given by a foreign government on the imported product. The Agreement includes detailed rules and procedures relating to consultations between governments, the investigation of subsidies and their amounts, a *de minimis* limit of 1% under which countervailing duties do not apply, and provides effective enforcement mechanisms.

Agreement on Anti-dumping

Dumping is the sale of a product on the export market at a lower price than it is sold in the domestic market of the exporting country. WTO rules provide that “dumped” goods which cause or threaten injury to domestic production in the country of importation may be subjected to the imposition of anti-dumping duties. This basic principle of GATT Article VI resulted in the Anti-dumping Code which was negotiated during the Kennedy Round. It contained an extensive set of rules and procedures to be followed by the authorities in (a) investigating complaints received from domestic producers; (b) assessing the degree of dumping involved; and (c) considering the question of injury. Prior to the Uruguay Round, the Code only applied between a small group of GATT members, mainly developed countries. The current Agreement is now an integral part of GATT 1994 and applies across the full WTO membership. The Uruguay Round resulted in a number of revisions to the earlier Code, covering such matters as sunset clauses limiting the duration of anti-dumping cases and more transparent procedures for conducting anti-dumping investigations.

Agreement on Safeguards

The Agreement on Safeguards relates to actions that may be taken by importing countries to protect a domestic industry in emergency situations. Specifically, the Agreement provides that measures should only be taken by importing countries after they have determined that the

products are being imported in such increasing quantities to cause or threaten serious injury to the domestic industry. A safeguard action may take the form of increased tariffs or quantitative restrictions on imports and should be applied on an MFN basis to imports from all sources. The Agreement provides for the phasing out of discriminatory voluntary export restraint arrangements and for establishment of an initial four-year time limit for all new safeguard measures. This period can be extended for an additional four years if circumstances warrant.

Agreement on Textiles And Clothing

In the past, certain developed countries deviated from the GATT rules governing international trade by restricting imports of textile and clothing products from developing countries under bilateral arrangements. These were negotiated by GATT members within the terms of the Multi-Fibre Arrangement and were the subject of much debate and acrimony between developed and developing countries for more than a quarter century. The Uruguay Round Agreement on Textiles and Clothing brought trade in this sector within the WTO framework of rules and disciplines. The Agreement is being implemented over a period of ten years, with completion scheduled for 2004. During the transition period, quotas and the other import restrictions are being removed by agreed percentages. Specifically, each country is integrating its textile and apparel products accounting for 51% of its 1990 import volume of imports listed in the annex to the Agreement in three stages. The remaining products will be integrated after the transition period has ended. During the transition period, quotas previously agreed to under bilateral agreements are being increased by the percentages specified in the Agreement.

Agreement on Customs Valuation

The original Valuation Code was agreed to in the Tokyo Round of negotiations and was modified only slightly during the Uruguay Round to

provide greater precision and permit customs officials to verify declared values. The Agreement on Customs Valuation, consistent with Article VII of the GATT, sets out the rules and procedures which countries follow in valuing goods for customs purposes as they enter the country of importation. Customs duties are generally payable on an ad-valorem basis, for example, the amount of duty imposed is a percentage of the import value of the goods. The principle basis for customs valuation provided for in the Agreement is the *transaction value*, that is, the price normally paid by the importer. To protect against this value being determined by the authorities in an arbitrary manner, the Agreement provides that the value should be determined on the basis of the "price actually paid or payable" for the transaction subject to adjustments for certain specific elements, such as commissions, brokerage, packaging, royalties, etc. incurred by the buyer and which are considered to form a part of the value of the goods. The Agreement incorporates sufficient discretionary authority for customs administrations to reject values declared by importers where they have reason to doubt the truth or accuracy of the stated values. In such cases, the Agreement provides for various alternate methods to be used to establish the value for customs purposes.

Valuation is an extremely important factor in the scheme of border impediments to trade. Depending on the rules that are applied, restrictive practices can have the same effect as the imposition or removal of a tariff. In other words, overvaluation of goods can increase the amount of customs duties levied on imported goods, while undervaluation can reduce the impact of the tariff.

Agreement on Preshipment Inspection (PSI)

The Agreement on Preshipment Inspection (PSI) is closely related to the Valuation Agreement. It provides an additional tool for developing countries to deal with over or under valuation or fraud and applies to preshipment inspections carried out under contract by individual firms or

companies on behalf of an importing Member country. The objective is to facilitate international trade through the use of transparent and consistent rules. It limits the activities of such firms to the verification of quality, quantity, price of the imported goods, or the customs classification of the goods to be exported.

Most of the obligations in the Agreement are directed at the user Member to ensure that the private firms involved follow the multilateral disciplines in their operations, prevent delays and consequent cost increases for exporters, provide guidelines for price verifications, protect confidential information, and allow for the speedy resolution of disputes. Members undertake to ensure that PSI activities are non-discriminatory, transparent, and are carried out in a uniform manner. This Agreement would not be required if customs administrations in some developing countries had the training and technical capacity to enable officials to fully implement the Valuation Agreement.

Agreement on Import Licensing Procedures

Import licensing is defined as administrative procedures requiring the submission of an application or other documentation as a prior condition for importing goods. In the absence of an agreement of this kind, import licensing requirements could adversely affect the flow of goods if the procedures adopted were not transparent or if the issuance of licenses was unpredictable or unnecessarily delayed. The objective of the Agreement is to ensure transparency, simplify administrative procedures and practices, and provide a consultative mechanism for the speedy, effective and equitable resolution of disputes. It separates licensing procedures into two categories: automatic and non-automatic. Automatic licensing covers situations where approval of an application is granted in all cases and is administered in a manner that does not have restricting effects on imports. The Agreement requires the issuance of

automatic licenses within ten days after receipt of an application. Non-automatic licenses are generally used for the administration of quantitative restrictions and are issued within a maximum period of sixty days. The Agreement requires Members to publish sufficient information for traders to know the basis on which licenses are granted. It incorporates notification provisions and requires that the administrative burden, in non-automatic licensing procedures, be limited to what is absolutely necessary.

Agreement on Rules of Origin

Rules of origin are used by customs administrations to determine the country of origin of imported goods where this may affect the treatment the goods receive on importation. Today, determining where a good originates is no longer an easy matter when raw materials and parts criss-cross the globe as inputs in widely scattered plants. Goods are transformed or have value added or various processes applied to them in different countries prior to their final sale. A traditional indicator of place of origin has been the last place of “substantial transformation” but international practice has not been entirely satisfactory. Indeed, Canada has a variety of special rules for preferential trade under NAFTA as well as our bilateral free trade agreements with Chile and Israel, and certain developing countries and commonwealth countries.

This Agreement is intended to provide clear and predictable rules of origin to facilitate the flow of international trade and avoid creating unnecessary obstacles to trade. The Agreement provides for transparency of laws, regulations, and practices and requires that they be applied in an impartial manner. It includes provisions on consultations and dispute settlement. The long term objective of the Agreement is to harmonize rules of origin used by WTO Members in their non-preferential trade instruments. Work is underway, in cooperation with the Customs Cooperation Council, to achieve harmonization in this field.

The Plurilateral Agreements

Government Procurement Agreement

The Government Procurement Agreement commits signatory countries to open their government purchases to international competition. The new Agreement applies not only to goods, but expands its coverage to new entities and agencies and includes procurement of services and construction contracts. However, it only applies to those countries that have agreed to abide by it and only to the purchasing entities and agencies listed by them in the annexes to the Agreement.

Basically, the Agreement imposes a requirement on its participants to apply the principle of national treatment to foreign suppliers (no pricing or other preference can be given to local or domestic suppliers) and not to discriminate between foreign suppliers in making their purchases (MFN treatment). In order to achieve these objectives, the Agreement lays down rules and procedures to be followed by procurement agencies in issuing tenders and making procurement decisions. It also incorporates extensive requirements to ensure transparency in the process. All WTO developed countries are members of the Agreement. Developing countries have been reluctant to accede primarily because they do not believe they are at a stage of economic development where they can become major suppliers to governments in other countries

(thus the benefits would be minimal) and because they might be required to discontinue practices of price and other preferences to domestic suppliers. This, in turn, could limit their scope to use procurement as a tool to promote economic and industrial development at home. A review of the operation of the Agreement is underway with a target date for completion of October, 1999.

Product Specific Agreements

Three of the Agreements relate to specific product areas: Civil Aircraft, Dairy, and Bovine Meat. The Agreement on Civil Aircraft was put in place to remove obstacles to trade in aircraft and their engines, parts, and components by eliminating customs duties and similar charges on importation and to bring order into the market by providing that the aircraft trade would be subject to the provisions of both the Agreement on Technical Barriers to Trade and the Agreement on Subsidies and Countervailing Duties.

The Agreements on Bovine Meat and Dairy Products, which have many common features, stress the importance of consultation and information exchange based on statistics supplied by Member countries. The Dairy Agreement includes minimum export price provisions for certain products and established the International Dairy Products Council to monitor the functioning of the Agreement. The International Meat Council was set up under the Bovine Meat Agreement to carry out the same function.

SERVICES ISSUES

"What Canadians are Saying"

...global markets for traded services look set to continue expanding at a healthy pace, creating significant export opportunities for a wide range of Canadian service-providers. With one of the world's largest service sectors relative to GDP, Canada is well positioned to benefit from this trend. It has recognized strengths in a number of key service sectors – telecommunications, computer services, transportation, some aspects of culture and entertainment, finance, engineering, professional services, as well as education and health care.

Gerry L. Lambert, Business Council of British Columbia
Tuesday, April 27, 1999 Vancouver

Trade in services is a rapidly growing part of the world economy; however, despite the fact that service industries account for 76 percent of Canada's GDP, services continue to account for only 12 percent of Canada's exports in contrast to the 21 percent average for industrialized countries as a whole. There is tremendous potential for expansion of Canadian services exports, along with the creation of skilled jobs throughout all parts of Canada, if priority is given to issues affecting service exporters...Canadian exporters of telehealth services need liberalization in both health services and insurance services in order to compete abroad.

Dorothy Riddle, Service-Growth Consultants Inc.
Tuesday, April 27, 1999 Vancouver

...express delivery service is very important to small businesses and enterprises in Canada. These small businesses would have a great deal of difficulty on their own arranging the transportation of their goods, the export of these goods to foreign countries where the Canadians do not speak the language, are not familiar with the customs [or] airport landing.... All they want is a company who will come to their door in Canada, pick up their package and deliver it successfully in a foreign land. Our members can do this only if issues of express delivery and the barriers that we face in these foreign countries could be removed on a world-wide basis.

Allan Kaufman, Canadian Courier Association
Tuesday, April 27, 1999 Toronto

How can we, as professionals, compete with foreign one-stop shopping? These are important issues, and they do not pertain to competition alone. Obviously, competition is important, because we do represent part of the market, but it is also important when you think in terms of the legal obligations that we have elsewhere as professional bodies. How are the professional associations going to be able to protect the public when these foreign one-stop shopping businesses begin competing with their members? Everything is interconnected.

Annie Chapados, Barreau du Québec
Monday, March 24, 1999 Montreal

... I would like to emphasize that there is a real problem with exporting engineering services to the United States and Europe. For about 15 years now, our engineering firms have found that it is much easier to do business in Asia and Africa.

Luc Laliberté, Ordre des ingénieurs du Québec
Monday, March 24, 1999 Montreal

For our engineers going around the world, not all of the other countries have a regulatory system like Canada's. We're probably unique in the breadth and depth of the regulation of the industry here. For our engineers going abroad, these agreements give them higher visibility and open up more markets for them. These agreements can also give the countries they're working in confidence in their level and their abilities.

Wendy Ryan-Bacon, Canadian Council of Professional Engineers
Thursday, April 15, 1999

we [accountants] have a duty to protect the public. Everyone is well aware that at the moment we practise our profession in an increasingly virtual manner, almost instantaneously. We can use the Internet to communicate with people throughout the world, and it is getting difficult to determine who did the work and under which jurisdiction. It is important for us to be able to properly determine this type of thing.

Ginette Lussier-Price, Ordre des comptables agréé(e)s du Québec
Wednesday, March 24, 1999 Montreal

The WTO must ensure that governments are guaranteed a continuing role in regulation of access to infrastructure. Saskatchewan Council for International Co-operation...opposes any movement by the WTO to force free competition for government services and infrastructure.

Lori Latta, Saskatchewan Council for International Co-operation
Friday, April 30, 1999 Saskatoon

One way of encouraging market access has been by the privatization of state institutions. This is said to bring greater efficiency. In many cases what has been built by taxpayers is being sold off for a fraction of the value to private interests.

Shirley Farlinger
Tuesday, April 27, 1999 Toronto

If Canada proceeds with negotiations toward trade liberalization through the WTO, it must do so without compromising in any way the democratic right of Canadian governments to fund, plan, and act as the primary or sole delivery agent for post-secondary education in Canada.

Mark Veerkamp, Canadian Federation of Students
Monday, April 26, 1999 Vancouver

...whenever new deals are made, no matter what else, there [should] be a complete and unequivocal 'carve out' of health and other social services that Canadians value so highly. These areas should simply be made untouchable.

Elizabeth Reid, Alberta Friends of Medicare Society
Wednesday, April 28, 1999 Edmonton

Above all a renewed [WTO] framework should ensure respect for a diversity of national economic approaches. One of the greatest conceits of the past century has been the presumption that we found a single model that will yield economic success wherever applied...each country needs tools at their disposal to address the problems particular to their own circumstances. In different approaches we actually find new sources of comparative advantage that create the conditions for gains from trade. For Canada this might mean provisions to enable countries to maintain key sectors such as health and education in the public sphere.

Marc Lee, Canadian Centre for Policy Alternatives
Monday, April 26, 1999 Vancouver

Services Issues

The General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services (GATS) is the first multilateral agreement governing trade in services and was one of the major accomplishments of the Uruguay Round. Services represent the largest portion of the economy of most developed countries and, increasingly, of developing countries. Prior to the GATS, access to services markets was not secured by contractual commitments. The Uruguay Round services negotiation was extremely complicated, involving multilateral, plurilateral, and bilateral negotiations at various stages to deal with the framework, sectoral, and issue-specific matters and annexes that eventually resulted in the GATS. It sets out the framework for trade in services around the world, imposes rules that all WTO Member countries must abide by, and provides a legal structure for dispute settlement should difficulties arise.

The Agreement contains three main features. First, it provides a *framework* of general obligations, rules, and disciplines. Second, it sets out special conditions in *annexes* relating to individual regulated service sectors such as telecommunications and financial services. Third, it contains *national schedules* of specific market liberalizing access commitments and lists of exemptions to the Most Favored Nation principle (MFN).

In general, the *framework* relates to all internationally traded services however they are delivered, including services supplied in the territory of one country to the consumers of another (tourism), services provided through the presence of a commercial entity of one country in the territory of any other (banking), and those provided by citizens of one country in the territory of any other (construction). It requires the application of the national treatment and MFN principles, provides for transparency in respect of

relevant laws, regulations, recognition requirements and administrative decisions relating to the supply of services, and limits restrictions on international payments for current transactions under the Agreement. Member countries are able to identify exemptions to the MFN obligation for a limited number of services. For example, an existing preferential bilateral arrangement may be maintained, provided the MFN exemption is recorded.

The *annexes* are an integral part of the Agreement. The annex on the movement of people permits governments to negotiate commitments respecting temporary stays to provide a service. It does not cover permanent employment or residence. The financial services annex enables governments to take measures to protect investors and depositors and ensure the integrity of the financial system. In telecommunications, the annex requires that governments provide the foreign service supplier non-discriminatory access to public telecommunications networks. Finally, the annex on air transport services covers aircraft repair and maintenance services, marketing of air transport services, and computer reservation services.

With respect to the *schedules*, each government registered in its national schedule initial market access commitments and the limitations it wished to maintain in respect of the eleven broad service sectors. The conditions set out in the schedules cannot be made more restrictive; they can only be improved. The GATS contains extensive commitments by signatories to secure more open markets for a broad range of services including financial, professional (engineering, legal and architectural), telecommunications, computer, transportation environmental, and tourism services. Specific negotiations have taken place on financial and telecommunications services and agreements have been concluded.

An overview of the GATS

The GATS sets out obligations for trade in services that are based on concepts similar to the GATT provisions for trade in goods, which have been in effect since 1947. One observer suggests that the GATS today is where the GATT was in 1947, before the changes introduced by successive rounds of negotiations over the past 50 years.

Unlike international trade in goods, the barriers affecting trade in services rarely take the form of tariffs or border measures. Barriers can be applied to prevent a foreign service provider from entering a foreign market or, once the foreign service provider has entered the market, other types of barriers may exist or be erected. These can include restrictions on a firm's ability to establish operations in a foreign market; regulations which are not clear, change without warning, or are not administered in a uniform manner; or entry requirements that limit the ability of foreign individuals to enter the market to provide their services. Market access in the context of agreements affecting trade in services means the ability of foreign services to compete relatively unimpeded with similar domestically produced services.

The GATS is essentially a framework of rules and schedules of commitment from Member countries relating to better access to markets. It is a multilateral, legally enforceable framework for trade in services. The Agreement provides a set of rules under which service suppliers can enjoy increasingly liberalized international trade in services and provides greater certainty in enforcing their rights in third countries. In force since January 1995, the GATS is an essential element of the World Trade Organization (WTO) Agreement and has had a significant liberalizing effect.

Services are not explicitly defined in the GATS agreement. They are generally considered to be intangible, invisible, and perishable, requiring simultaneous production and consumption. This definition is modified by advances in technology

that may allow for the "storability" of certain services through electronic media. *The Economist* magazine once defined services as "anything sold in trade that could not be dropped on your foot." The problem is that when a service such as software is contained in a computer it can be quite painful if dropped.

The term "trade in services" in a GATS context, applies to international transactions involving fields as diverse as distribution, tourism, banking, insurance, transport, telecommunication, audiovisual services, and consulting engineering. The term also applies to the international movement of capital, particularly direct investment, and to the international movement of people when involved in the delivery of a service.

The GATS covers all service sectors, as well as all measures affecting trade in services taken by any level of government except governmental services supplied on a non-commercial and non-competitive basis. This includes federal, provincial, and local governments as well as non-governmental bodies acting in a regulatory manner on the basis of authority delegated from a government. For example, a provincial law society or architects' association. Measures covered by the agreement include laws, regulations, and any other kind of act by a member Country and therefore include a wide range of measures affecting trade in services. In this connection, it is also important to recognize, as Professor Bernier reminded the Committee, that there are strong linkages between the various service sectors so that a policy decision in one area, such as trade presence, can have a profound effect in other sectors such as investment. (*Evidence*, Meeting No. 104, March 22, 1999, Quebec City) These linkages are discussed further in Chapters 8 and 10 concerning e-commerce and investment.

The GATS is the first enforceable multilateral agreement to deal with investments, as most developed countries agreed to provide unrestricted access and national treatment for all forms of commercial presence, notably investment. In the

area of temporary entry of natural persons, significant progress was made to ensure service suppliers that their personnel would be able to enter foreign countries to manage, market, and negotiate service contracts. Service suppliers worldwide benefit from a stable context in which to plan their international activities, secure in the knowledge that a given Member country will abide by its trade obligations, lest it be subject to enforceable legal proceedings, under the auspices of the WTO Dispute Settlement Body.

Domestic regulations play an important role in increasing or limiting the ability of foreign service firms to provide their services in an export market. Many of these relate to qualification requirements and procedures, technical standards, and licensing arrangements and can reduce market access by not being applied in a transparent and consistent manner. While these regulations are often in place to achieve specific domestic objectives, it is important to ensure that they are based on objective and transparent criteria and are not more burdensome or discriminatory against foreign suppliers.

International agreements sometimes include provisions that promote mutual recognition agreements (MRAs) between governments and their domestic professional organizations dealing with licenses or certifications, education, or relevant experience of individuals that provide services. These organizations can be governmental or non-governmental bodies depending on the service sector concerned. Trade agreements such as the NAFTA and the GATS allow for the development of MRAs between members of the agreements, but generally require that non-members also be allowed to enter into the MRA if they are willing to meet the same conditions. The issue of whether the GATS should incorporate rules relating to establishing MRAs will probably be on the agenda for the next round.

A noteworthy feature of the GATS is that it not only accommodates, but is committed to,

progressive liberalization through the gradual market opening approach. In this context it recognizes that because the service sector is so broad and embraces many sub-sectors differentiated by unique characteristics, liberalization could not be brought about suddenly.

In 1997, world trade in commercial services, on a balance of payments basis, accounted for around one-fifth of world exports for goods and services, amounting to over U.S.\$1 trillion. Canada's share of this trade was about \$40 billion in exports. In Canada, the service industry has contributed to the creation of 90 % of Canada's new jobs, and represents over 72 % of total employment in Canada.

While the United States is the principal market for Canadian services, as is the case for goods, Canadian service exports are more diversified. In 1996, Brazil, Sweden, Taiwan, Mexico, the Philippines, Singapore, and Thailand were the largest growing service export markets for Canada. Given that the total value of domestic and international transactions in services in the global economy has been estimated to be as high as U.S.\$14 trillion, the economic potential arising from increased global liberalization of trade in services is very significant.

As part of WTO member governments' commitment to progressive liberalization in this area, it was agreed at the conclusion of the Uruguay Round to further liberalize trade in services. Negotiations will begin in the year 2000. Services also form part of Canada's negotiations with the European Free Trade Association (EFTA) and the Free Trade Area of the Americas (FTAA). The WTO negotiations will provide opportunities for Canada to pursue increased access to foreign markets for Canadian service firms. As the GATS already provides a comprehensive framework of rules and disciplines, it is expected that the future negotiations will concentrate on expanding coverage and broadening commitments made by member countries.

Schedules of commitments

Under the GATS, individual members' specific obligations are found in its Schedule of Commitments. In order to determine the market access extended to foreign service providers by a given member it is necessary to read that member's Schedule of Commitments.

Notwithstanding the broad coverage of the agreement, members can choose those service sectors where certain GATS obligations apply. After these commitments are made they are "bound." Like bound tariffs, they can only be modified or withdrawn after negotiations with affected countries — which would probably lead to compensation. Because "unbinding" is difficult, the commitments provide a stable and secure environment in a given sector, whether it be for investors, service importers, or service exporters.

These Schedules take into account the four major ways in which service suppliers can provide their services — the so-called "modes of supply", and deal with them separately. The four modes of supply are:

- **Cross-border supply** — Service is mailed, electronically sent, or otherwise transported across a border.
- **Consumption abroad** — A consumer travels across a national border to consume a service. Examples include a tourist or a student.
- **Commercial Presence** — A service provider establishes a foreign based corporation, joint venture, partnership, or other establishment to supply services to foreign persons.
- **Presence of natural persons** — An individual either alone or as an employee of a service provider travels to another country to deliver a service.

The Schedules also list restrictions on market access that a member maintains in a specific services sector. These market access restrictions are broadly defined as: limitations on the number of service suppliers or service operations; limits on the value of transactions or assets foreign firms

may have; limitations on the number of persons that may be employed either in a specific sector or by a specific firm; restrictions on the legal form through which a service supplier may supply a service (i.e. joint-venture only); and limits on foreign investment.

Obligations

The strength of the GATS resides in two types of key obligations it imposes on its members:

A. General obligations

These are found in the framework of the agreement itself, and apply to **all** services sectors. While all of the obligations identified in the framework are important, the two most significant

Most Favoured Nation (MFN) treatment: This means that firms can rely on the GATS generally to ensure that they will be treated by a given member country in the same manner as any of their foreign competitors. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.

Transparency obligations: Members are obliged to promote clarity and public availability of domestic laws and other measures, so as to facilitate the gathering of information by foreign services suppliers regarding domestic regulations affecting trade in services in that country.

The MFN and transparency principles form the foundation of the GATS. However, not all governments were willing to apply the MFN principle across the board and an exemption provision was built-in. One of the reasons behind the exemption provision was the reluctance of some countries, especially larger ones, to give other countries a "free ride" since under the MFN requirement they would lose the opportunity to exchange their open markets for improved access to the markets of their trading partners

(reciprocity). Article II permitted members temporary exemptions which are subject to the up-coming review. Thus, in principle, exemptions declared as part of the initial acceptance of the GATS are intended only to be for a limited duration. In some instances, the exemptions relate to whole sectors such as maritime transport while others are more narrow and specific such as Canada's exemptions for film co-production agreements, fisheries related services, and the dispute settlement provisions of bilateral investment agreements. The MFN exemption provision was invoked by as many as 60 countries when the GATS came into force.

B. Specific negotiated obligations

These result from undertakings made by a member in its Schedule of Commitments and set out, on a sector by sector basis, the conditions under which foreigners may provide services in the domestic market. These undertakings are described both in terms of permissible modes of supply and with respect to the conditions required for market access. Once a commitment has been made by a member country in a specific service sector or sub-sector, that country is no longer merely bound by the general MFN obligations found in the GATS, but also by a "national treatment" obligation, meaning that market access must be granted under the same conditions allowed to domestic service suppliers.

The national treatment obligation is applicable only to scheduled commitments and only if reservations are not made to the contrary. It is a powerful trade liberalization vehicle, given that once it is granted, a member is obliged to treat foreign services and service suppliers in a manner no less favorable than domestic services and service suppliers. The treatment granted need not be identical so long as it does not worsen the competitive conditions faced by foreign services and service suppliers. There is one major difference between the GATS commitment and that given under the GATT. In the latter case, it applies across the board whereas under GATS it

has negotiating currency since it can be granted, denied, or qualified depending on the sector and negotiating countries concerned. The Agreement also provides further possibilities to expand a member's scheduled commitments to include matters not dealt with under the general access provisions and national treatment such as qualifications, standards and licensing, government procurement, subsidies and safeguards.

The GATS also provides for the possibility of sector-specific negotiations, as has occurred in the telecommunications and financial services sectors. The Agreement on Basic Telecommunications concluded in 1997, while significantly liberalizing trade in basic telecommunication services also contains a set of principles covering matters such as competition safeguards, interconnection guarantees, transparent licensing processes, and the independence of regulators in a commonly negotiated text called the "Reference Paper." The example of the Reference Paper and its treatment of pro-competitive principles is one that may be considered for broader application to other service sectors.

The Agreement on Financial Services, which was concluded in December 1997 and entered into force earlier this year, provides for specific commitments as opposed to general obligations, taking into account the specific characteristics of financial services. The most significant in this regard is that, in domestic regulations, members shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial supplier or to ensure the integrity or stability of the financial system. Except to safeguard the balance of payments, the GATS does not allow members to apply restrictions on international financial transfers and payments for current transactions relating to their specific commitments. For example, if a member is committed to the cross border supply of a service, the associated movement of capital is to be

accepted. Although these provisions apply to trade in all services, they are particularly relevant in the financial services sector, as a commitment to liberalize trade in financial services without an associated understanding to liberalize capital flows would be virtually worthless.

Witness views

With 72% of employment in services, the GATS regime applies to by far the largest segment of the Canadian economy. Witnesses addressed both the general provisions of the agreement and provided particular examples and suggestions of where changes are needed. A number of witnesses, including Professor Winham, noted that service negotiations were mandated for 2000 and that the opportunity should be used to increase commitments by countries to further liberalize service trade (*Evidence*, Meeting No. 107, March 24, 1999, Halifax). The Canadian Chamber of Commerce stated that “progress in liberalization of trade and services, we feel, is critical,” (*Evidence*, Meeting No. 123, April 28, 1999, Toronto) and the Business Council of British Columbia supported this position (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver;

A discussion of services is linked to other sections of this report, especially trade in culture and electronic commerce and with investment. Because of the commercial presence provisions of the GATS, “as soon as we start talking about a trade presence, we are probably talking about investment, and the question arises as to whether such investment to establish a trade presence comes under the agreement on services or the agreement on investment (*Evidence*, Meeting No. 104, March 22, 1999, Quebec City).” Professor Hart drew attention to another linkage, the competition policy principles contained in the Reference Paper for the Agreement on Basic Telecommunication Services (*Evidence*, Meeting No. 120, April 26, 1999, Vancouver).

John Gero, Director General of the Trade Policy Bureau responsible for services at the Department

of Foreign Affairs and International Trade, provided the Committee with an overview of the upcoming services issues. While Canada and other WTO members would be seeking further commitments in various sectors, there would be a need to focus on making more transparent the policies affecting services with respect to qualifications, technical standards, and licensing arrangements. “Barriers for trade in services ... are often much less visible ... Restrictions on the ability of foreign firms to deliver their services to foreign consumers can include restrictions on their ability to establish operations in a foreign market; regulations that are not clear, that change without warning, or are not administered in a uniform manner; or entry requirements that limit the ability of foreign individuals to enter the market to provide their services.” (*Evidence*, Meeting No. 90, February 11, 1999) Other testimony provides examples of these restrictions within particular sectors, such as the delivery of consulting services across borders.

Other general issues outlined by John Gero were the development of rules for granting subsidies to national service providers and the need to improve the quality of the statistical database for services. The latter is an issue raised by Dr. Riddle and one that arose in the case of cultural goods and services. Mr. Gero also noted the special protocols or agreements that had been negotiated for telecommunications and financial services, and indicated that there might be further sectoral agreements in the forthcoming negotiations. (*Evidence*, Meeting No. 90, February 11, 1999)

The ability of service providers to work in foreign countries was raised by a number of witnesses. There are two aspects to the issue: the recognition of one country’s qualifications in another country, and the procedures used by immigration officials at the border. The Canadian Council of Professional Engineers drew attention to the desirability of mutual recognition agreements to recognize qualifications in different countries but “recommends that future trade agreements do not require mutual recognition agreements to be achieved.” Rather, the Council would like to

undertake its own assessment of qualifications in other countries and work with associations such as the Engineers' Mobility Forum, the APEC Engineer Project and the European Federation of National Engineering Associations (Submission, Canadian Council of Professional Engineers, April 30, 1999).

The Appraisal Institute of Canada commented favorably on the mutual recognition agreement in the accounting sector and urged the Working Party on Professional Services in the WTO "to develop complementary and consistent guidelines to cover the real property sector." (*Evidence*, Meeting No. 119, April 26, 1999, Winnipeg).

Dr. Dorothy Riddle, who has specialized in service issues for the past two decades and now operates her own consulting firm, drew the Committee's attention to the difficulties encountered for temporary business entry into the United States in order to deliver consulting services. She argued that the GATS is often biased towards commercial presence as the means for delivering a cross-border service and that this is contrary to the interests of small service exporters. In order to compete effectively, some service firms need to have the option to select between the different modes of supply. Another suggestion is the possibility of reforming the structure of the GATS to conform with the way in which services are delivered. For example, "telehealth services need liberalization in both health services and insurance services in order to compete abroad." (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver) Commitments in one sector but not the other may frustrate the efficient delivery of the service.

For the provision of telecommunications services, Meriel Bradford, Vice-President of Teleglobe Inc., noted that the firm's "success as a global company is largely attributable to telecommunications liberalization and our government's efforts to open markets abroad." (*Evidence*, Meeting No. 112, April 13, 1999) She urged the Canadian Government to make

telecommunications services a priority sector for further liberalization. As of 1998, about 85% of the world's telecom traffic was still carried by existing or former monopoly carriers, many of which continue to be state owned or have limits placed on foreign investment. Other measures requiring attention are associated with the regulatory principles in the telecommunications Reference Paper relating to interconnection dispute settlement and transparency. As far as Canadian policies are concerned, Ms. Bradford along with William Grieve, Vice-president of BC•Telus, recommended the liberalization of rules that limit foreign investment in domestic infrastructure facilities (*Evidence*, Meeting No. 124, April 28, 1999, Edmonton).

Representatives from associations of lawyers, engineers, and accountants appeared before the Committee in Montreal. A number of issues were common to all three professions, including the ability of their members to work not only abroad but in other provinces and the need for provinces to give approval for any trade commitments made by the federal government (*Evidence*, Meeting No. 108, March 24, 1999, Montreal). Express delivery services were represented by the Canadian Courier Association, which urged the government to include postal and express delivery services in the next round of negotiations. At present courier and postal services are listed separately under communications services in the GATS system of classification so that commitments can be made for one, both, or neither. The Canadian Bankers Association submitted a brief calling for an extension of the concessions under the 1997 Financial Services Agreement, but focussed most of its attention on the electronic commerce dimensions of financial services since 85% of all such transactions are already conducted electronically (*Submission*, Canadian Bankers Association, May 1999).

The Committee is cognizant of the breadth of activities falling under the GATS umbrella and the differences in conditions affecting each of the many service sectors. Much work needs to be done to collect and assess the information relevant

to each sector in order to decide where offers of further liberalizing commitments can be made. Industry needs to make detailed representation of their requirements, as some sectors did for the Committee, but details of other service sectors were not made available. And the Government needs to assist in explaining how the detailed provisions of the GATS are applied in practice. Understanding how commitments are made, and what they mean in practice, given the experience since the introduction of the GATS, is very much a learning experience for all involved. Moreover there are some big question marks that hang over the GATS highlighted by the WTO decision on periodicals and bananas. Which set of trade obligations apply when the traded item is a good combined with a service?¹

world markets for its continued prosperity, Canada has a vital stake in seeing a successful outcome of the services negotiation to be launched in December. Most views presented to the Committee noted that this negotiation would probably lead to further liberalization and expansion in sector coverage under the GATS and that Canada should be prepared to take a major role in this exercise. The Committee concurs with this view and notes that the government has already launched a process designed to identify Canada's specific priority interests in export markets in terms of countries, types of services, methods of delivering a service, movement of people, and impediments or barriers to doing business (private or governmental).

Conclusions and Recommendations

As a country heavily dependent on access to

Recommendation 22

The Committee strongly urges the Government to complete its identification of Canada's specific priority interests in the services export markets as the basis for intensive consultations with the private sector and provincial governments in the lead up to the Seattle Conference.

The reservations and exemptions which have been recorded in Canada's schedules as well as those of other countries will be up for review in the new round of negotiations. Some items on the Canadian schedule are particularly sensitive, e.g. culture and investment, and, as such, must, in the Committee's opinion, be the subject of a broad based consultation process relating to developing

future policies prior to and during possible negotiations in these areas. In this connection, Canada's current schedule reflects differing levels of obligations as between provinces. These negotiations may provide an opportunity to harmonize or reduce the variety of commitments given by Canadian governments in this area.

Recommendation 23

The Government should examine the reservations and exemptions on the Canadian schedule with a view to identifying items of particular sensitivity or areas where differing provincial requirements might be reduced. At the same time, the schedule of other countries must be examined to identify items where improved market access for services might be sought and Canada should be prepared to engage in consultations and/or negotiations in these matters.

Liberalization within the services sector is closely linked to consequential freeing up of practices in

related fields e.g. competition policy and investment. The issue of linkages was raised by a

¹ Based on discussion at a conference organized by the Centre for Trade Policy and law on WTO dispute settlement held in Ottawa on March 25, 1999. It appears that at the end of the Uruguay Round, negotiators for the GATT and the GATS never met to resolve the question of how conflicts between the two agreements would be resolved.

number of witnesses. It is clearly sensitive and will require particular care from our negotiators as

the WTO discussions proceed.

Recommendation 24

Recognizing the interrelationships between the various sectors in the services field, the Government should identify the likely impacts of its negotiating policy choices for one sector on other sectors, and explain them in detail for all stakeholders to take into account in their consideration of the issues.

Mutual recognition agreements (MRAs) are an important issue for professional organizations within the context of provisions relating to the movement of people and the treatment of business and professional services. Representatives of the legal, accounting and engineering professions appeared before the Committee. All recognize the benefits of MRAs in assisting their members to

work in other countries but there is no unanimity of view at this stage as to how far Canada should enter into new commitments in this regard. Moreover we understand that MRAs are presently outside the scope of the WTO. This is clearly an area where further work is required, not only with the professions but also with provincial governments.

Recommendation 25

The Committee urges the Government to delineate all of the issues involved relating to mutual recognition agreements for professional bodies, so that it will be in a position to engage in substantive discussions of this topic during the next WTO round.

The issues of safeguards and subsidy practices relating to services were raised by government officials in their appearances before the Committee. While these did not receive much

attention from other witnesses, the Committee agrees that these could be important elements in international services trade.

Recommendation 26

The Government should be prepared to engage in discussions during the next round directed to possible GATS rules on subsidies and safeguard practices.

The Committee was informed that the statistics on services are generally not as detailed as those on trade in goods. Statistics are one of the

negotiator's most important tools for determining market access opportunities.

Recommendation 27

The Government should work with private-sector services firms, the provincial databases, and Statistics Canada to improve the services database as quickly as possible.

CULTURAL ISSUES

"What Canadians are Saying"

We can all recognize that a sense of shared values is fundamental to the continued success of a democratic society ... The only way we're going to maintain this sense of shared values is to have frequent opportunities to exchange and to share value-laden expression of ideas that reflect Canadian culture, whatever Canadian culture might be.

Dennis Browne, Centre for Trade Policy and Law
Tuesday, March 9, 1999

Canada can no longer pretend that our cultural industries are protected under international trade treaties, when a rising tide of disputes clearly demonstrates they are not.

Paul Spurgeon, Société canadienne des auteurs,
compositeurs et éditeurs de musique (SOCAN)
Wednesday, March 24, 1999 Montreal

Why do we continue to see challenges to Canadian cultural measures? Because the existing mechanisms and language Canada tries to use in the trade agreements to protect our right to support our culture do not work. They are inadequate.

Brian Gromoff and Gary Neil, The Alliance of Canadian Cinema,
Television and Radio Artists (ACTRA) Performers Guild
Thursday, April 28, 1999 Calgary

... We might wonder about a complete exemption for cultural industries as in the case of NAFTA. This so-called complete exemption did not protect Canada's interests in culture, because the United States can impose trade sanctions when it wishes, and under whatever conditions it wishes. Most of the time, Canada has had to back down when the United States did not like one of our cultural programs.

Professor Gilbert Gagné, Department of Political Science, Concordia University
Thursday, March 25, 1999 Montreal

In recent WTO rulings, unfavorable outcomes have resulted in the compromise of a nation's cultural policy. For this reason, action is required immediately. To allow for the cultural expression of a nation or people to manifest itself, we must ensure that there is room for multiculturalism and for cultural pluralism in a global environment of trade. This can be best achieved at the WTO. If not the consequences may include a rise in nationalism and the potentially devastating consequences of a people aggressively defending their culture.

Hamal Docter, Cahoots Theatre Projects
Wednesday, April 28, 1999 Toronto

...at the end of the day the [cultural] policies that have to be developed and the structures that have to be developed surely have to come from within Canada with a strong position of protectionism, which I know is an out-of-fashion word. It's something that people don't want to talk about, don't feel that it's correct. But if we don't protect our culture, who's going to?

Jack Stoddart, Association of Canadian Publishers
Wednesday, April 28, 1999 Toronto

...Canadian content and foreign ownership restrictions have allowed us to maintain a minimum amount of room on the market, despite everything. We must maintain these policies that Canada adopted in the late 1960s and early 1970s, which many countries throughout the world have imitated. For example, France, Italy and a host of other nations have combined foreign ownership restrictions and domestic content requirements for their television industries. Some countries have applied the same rules to radio, albeit to a lesser extent. The most recent example of a country imitating policies that work well here in Canada is Israel, which adopted a local music quota for its radio stations over the Christmas holidays.

Robert Pilon, Association québécoise de l'industrie du disque (ADISQ)
Wednesday, March 24, 1999 Montreal

In the sound recording industry we have less to gain, and more to lose, should unfettered trade prevail. It's not just that songwriters and artists have enjoyed increased exposure due to measures like Canadian content regulations. It's that cultural diversity has been preserved at all...Artists are among the first to criticize these increasing barriers to the free dissemination of their works. Free access is important to our intellectual and social freedom. Loss of all controls, including the rights of creators, workers and consumers, however, is a great concern.

Ellie O'Day, Pacific Music Industry Association
Tuesday, April 27, 1999 Vancouver

The success story of Canadian publishing and Canadian authorship as we all know it is now legendary. One of every two consumers will choose or favour Canadian authorship. In educational publishing, original Canadian textbooks account for more than 85% of all school textbook purchases and more than 30% of all purchases of colleges and universities. The better we do the more attention we are paid and the more attractive a piece of our market becomes. We will therefore need to manage our international trading relationships very carefully because we have no intention of hiding our light under a bushel to avoid the watchful eye of our trading partners. Our export success has made huge news and we need to continue to reach into foreign markets and to be welcome in them. At the same time we must be vigilant about the integrity of this market, our market.

Jacqueline Hushion, Canadian Publishers' Council
Wednesday, April 28, 1999 Toronto

I submit that every country is entitled to its own cultural space, and we need a policy environment to do that, and I think every country in the world with the possible exception of the United States [would agree]....All the other countries have a national interest. I mean it's really essential, a national interest, in creating this new instrument on culture that recognizes what culture is, that it needs its own policy environment, and then that can drive technical details of sector specific trade agreements. But we need a world consensus that we have a right to our own cultures in our own country.

John Thomsen, Canadian Magazine Publishers' Association
Wednesday, April 28, 1999 Toronto

Too often 'cultural' industries have been seen as solely domestic and protectionist. The truth is that the broadcasting industry will not be able to sustain a domestic presence unless we take an international view. With the proper trade promotional support and the necessary access to foreign markets this is a sector in which there is significant potential for growth as the world demand for television programming continues to expand at an unprecedented pace.

Michael McCabe and Glenn O'Farrell, Canadian Association of Broadcasters
Wednesday, April 28, 1999 Toronto

In light of current trade agreements, Canadian policy-making in the cultural field is being undertaken with one eye on potential challenges to our actions—a kind of policy self-censorship. Even with exemptions for culture or country-specific reservations, or in the absence of specific commitments respecting cultural policies, the agreements have a substantial impact on Canada's cultural sovereignty. This impact will only increase as technological change continues to blur distinctions between the cultural industries, computing, and telecommunications.

Jane Logan, Specialty Premium TV Association
Tuesday, April 13, 1999

...due to the sensitivity of cultural issues at international trade and investment negotiations, culture has been left until the eleventh hour. By this time, the larger framework of the agreement has been forged, and negotiators often seek a quick and easy fix to the treatment of culture. The CCA does not wish to challenge the goodwill of our trade negotiators; however, we believe Canada and like-minded nations must start the millennium round with a clear enunciation of our concerns about the inadequate treatment of culture within the larger GATT and GATS framework.

Megan Williams, Canadian Conference of the Arts (CCA)
Tuesday, March 9, 1999

Cultural Issues

The Context for Cultural Trade

The treatment of culture in international trade law is not a settled issue. Forerunners of recent disputes involving magazine and film distribution policies occurred in the 1920s when European countries used screen quotas to protect their film industries from the influx of American films. By 1945 the protective legislation of many European countries had been removed or amended in part because of American threats or boycotts. Article IV of the GATT in 1947 provided an interim solution to the trade frictions by permitting the use of screen quotas in the case of films, thus implying that films were goods and subject to the GATT disciplines that dealt only with goods. In the 1960s, the United States requested that the GATT investigate the restrictions placed by countries on television programming but no agreement was reached on this issue. Subsidies for films and television programs were an issue in the Tokyo Round of GATT negotiations in the 1970s, and the United States requested consultations about the program restrictions contained in the "Television without Frontiers" directive of the European Community in the 1980s.

In the Canada–United States Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA), culture was stated to be off the negotiating table. Special wording was included in both agreements so as to provide a measure of exemption for the cultural industries. Less ambiguous wording was included in the cultural exemption in two bilateral free trade agreements with Israel and Chile. The cultural exemption in the FTA, which has been carried over into the NAFTA, has yet to be tested and it is unclear whether conflicting Canadian or American interpretations of the exemption apply.

The issue of culture became part of the services negotiation in the Uruguay Round when consideration was given to the inclusion of a specific annex on audiovisual services. Some

parties argued for a cultural exemption similar to the FTA, while the United States opposed, and continues to oppose, such an exemption and argues for an open market for cultural products. Under the WTO, audiovisual services are identified as a service activity subject to the obligations of the GATS. In the next WTO round of negotiations, the issue of the treatment of cultural goods and services will almost certainly be raised. In the OECD negotiations for a Multilateral Agreement on Investment (MAI), which ended in 1998, considerable attention was given to the possible treatment of the cultural industries.

One issue pervading these discussions has been whether the output of the cultural industries is a good or service because of the differing obligations under GATT 1994 in the case of a good and the GATS in the case of a service. The WTO panel decision on periodicals brought the goods–services question to the fore. The distinction determines the obligations that a country faces in international trade agreements. In the periodical decision, the production and distribution of periodicals was considered by the dispute panel to be both a good (the hard copy of the magazine) and a service (the editorial and advertising content that can be transmitted in non-tangible forms). Both the obligations of the GATT and the GATS were seen to apply.

In the case of culture, if a measure affects the transborder movement of the hard copy of a book, newspaper, periodical, film, tape, or CD, goods are involved, even if the content of each is considered a service. The same content could be sent by wire or wireless transmission and it would be considered an intangible service, at least until it was stored on some physical object. A tariff placed on magazines and a tax placed on the editorial content of magazines have similar effects even though the former is directed at a good and the latter at a service. Many of Canada's cultural policy measures such as subsidies, tax incentives,

quotas, restrictions on private ownership, and the operation of public enterprises like the CBC, affects both goods and services in circumstances where both are combined. Periodical legislation contained in Bill C-55 is aimed at advertising services. The question to be resolved is how distinctions are to be made between goods and services when the two are combined and where different trade rules apply. This problem affects items as diverse as advertising, bananas, music, and steel. Financial, storage, and transportation services are combined with the sale of most tangible items.

A development that requires recognition by Canada in future trade negotiations is the maturing of many of Canada's cultural industries and the growing importance of foreign markets for their exports and investments. Export importance varies by industries within the cultural sector but the trend is the same for all of them and especially for new media. Canadian cultural interests will want to ensure continuing access to foreign markets, which will require some compromise with those seeking to maintain Canada's existing domestic cultural policies.

Cultural Trade Policy Arenas

Canada's trade in culture is subject to the disciplines of the WTO, FTA, and NAFTA. Trade in cultural goods is subject to the non-discrimination disciplines of GATT 1994 with two exceptions. Article IV of GATT permits countries to establish quotas for the exhibition of domestic films, and Article XX(f) permits exceptions for measures related to the protection of national treasures of artistic, historic, and archeological value.

The rules for subsidies in support of cultural goods producers require that the subsidies are paid directly to the producers, as in the case of postal subsidies to periodical publishers. This means that

tax credit schemes that are widely used to support audiovisual production may be considered in contravention of the national treatment provisions of the GATT. Subsidies also have to conform to the Agreement on Subsidies and Countervailing Measures (one of the Multilateral Agreements on Trade in Goods) which states that certain types of subsidies can be challenged if they cause serious harm to producers in other countries.¹

Another multilateral agreement, the Anti-Dumping Agreement, may also apply. It is frequently alleged that American magazine publishers engage in unfair competition by dumping their editorial content into Canada after having recouped the costs of production in their home market. It is difficult to apply the concepts used for assessing the dumping of items such as automobiles or textiles where the prices in the domestic and foreign markets can be compared. In the case of a magazine, book, film, or television program, for example, all the costs of producing the content are incurred before any sales are made. Prices for the sale of film rights or advertising space tend to depend on conditions of market demand. Thus, a television program sold to a broadcaster in Edmonton will be sold for less than the same program sold in the Montreal market which in turn will be less than in the New York market. It would be misleading to state that the program is being dumped in the lower priced smaller markets or that it is unfair competition because advertising rates are lower in the market with the smaller audience.

Trade in cultural services is subject to the provisions of the GATS. The general treatment of services, as described in the discussion paper on services, applies to cultural services. Canada has taken an exemption for MFN under Article II for the coproduction treaties for film and television production that it has with a number of countries. Bilateral coproduction treaties provide benefits for the two partner countries that are not available to

¹ Prevailing disciplines for culture are examined in more detail by Ivan Bernier, who appeared twice before the Committee, in "Cultural Goods and Services in International Trade Law," D.Browne, ed., *The Culture/Trade Quandary, Canada's Policy Options*, Ottawa, Centre for Trade Policy and Law, 1998, pp. 108-54.

other countries. Canada did not take an MFN exemption for its film distribution policy, one that grants more favorable treatment for certain American distribution companies but is not available to new foreign investors. Under Part III of the GATS, Canada made no market access or national treatment commitments for any cultural services and none in the wholesale trade services sector for musical scores, audio, and video recordings. It is likely that there will be pressure for countries that have made no or limited commitments to offer some in future services negotiations.

The treatment of cultural goods in the NAFTA (Annex 2106) is conditioned by Article 2005 of the FTA which, in the first paragraph, states the exemption for the cultural industries except as specifically provided for. Under this paragraph, the parties are free to intervene in support of their cultural industries. Paragraph 2 of Article 2005 introduces the limitation that allows a party to take measures of equivalent commercial effect in response to actions that would have been inconsistent with the agreement but for the first paragraph.

The cultural exception in NAFTA Annex 2106 is also applicable to cultural services between Canada and Mexico and Canada and the United States, but not between Mexico and the United States. However, because cultural services are not mentioned in the services chapter of the FTA (no reference is made in FTA Annex 1408 to cultural services), there can be no obligation concerning services and no recourse to measures of equivalent commercial effect between the NAFTA parties.

Discussion of a procedure to exempt culture from the obligations of an international agreement on investment occurred in the OECD deliberations, now ended, on the MAI. The draft agreement dealt not only with investment but with the treatment of intellectual property rights. Both these topics will likely be part of any future trade negotiations. Cultural trade also overlaps with

issues related to electronic commerce. Print and audiovisual content are distributed via the Internet for which trade disciplines have yet to be developed. Because of convergence between telecommunications and broadcasting, which are subject to different regulatory regimes, it will become increasingly difficult to sustain different sets of rules. Those involved in developing “new media” content argue for an open system for distributing their content. This is a challenge to the traditional policy framework where the regulatory system for broadcast licencing mandates Canadian ownership and Canadian content rules apply.

On February 18th, 1999 the Cultural SAGIT issued a discussion paper “New Strategies for Culture and Trade” (see Box 7.1). It set out four possible approaches for future trade negotiations involving culture:

- Negotiate a broad cultural exemption;
- Make no commitment on culture;
- Create a new international instrument on cultural diversity;
- Develop agreements covering specific cultural industry sectors, measures, or practices.

The members of the SAGIT supported the third option for a special instrument. The new instrument could be seen as a separate treaty outside the WTO or as a sectoral agreement similar to that for telecommunications and financial services within the WTO. Many of the witnesses concerned with cultural trade issues commented on this proposal.

Witness Views – A New Instrument

There was wide support among witnesses, including those representing cultural interest groups, for exploring the provisions of a special instrument for culture and movement away from continuing to pursue an exemption for culture in trade agreements. The Canadian Conference of the Arts (CCA) noted that “country-specific

Box 7.1. What is the Cultural SAGIT and its proposal?

The Cultural Industries Sectoral Advisory Group on International Trade (SAGIT) is part of the government's advisory system on international trade. It provides a means for officials from the Department of Foreign Affairs and International Trade and the Department of Canadian Heritage to consult with representatives of Canada's cultural industries. The sixteen members of the committee are drawn from the industry and those associated with its activities. The report, *Canadian Culture in a Global World, New Strategies for Culture and Trade*, released in February 1999 and available on the website <<http://www.infoexport.gc.ca/trade-culture>>, was the result of two years of study. The recommendation for a new instrument is contained in the report.

The SAGIT's proposal for a new instrument on culture would recognize the importance of cultural diversity and the idiosyncratic features of cultural goods and services — what they do and how they are produced and distributed. The instrument would aim to establish how trade disciplines would apply or not apply to cultural measures that meet agreed upon rules.

reservations and the cultural exemption model have not proven to be effective guarantees for cultural autonomy and self-direction.” (*Evidence*, Meeting No. 96, March 9, 1999) The Canadian Association of Broadcasters (CAB) stated “we do not believe the cultural exemptions provide Canada’s cultural industries with effective support (*Submission*, Canadian Association of Broadcasters, April 28, 1999) and a similar view was expressed by the Canadian Independent Record Production Association (*Submission*, Canadian Independent Record Production Association, April 28, 1999) and by the Pacific Music Industry Association (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver). Dennis Browne, Director of the Centre for Trade Policy and Law stated that “it would be a mistake to continue to seek exemptions from the rules.” (*Evidence*, Meeting No. 96, March 9, 1999) Professor Acheson of Carleton University noted that “exempting culture from trade agreements does not exempt cultural issues from international discipline,” (*Evidence*, Meeting No. 96, March 9, 1999) a view similar to advice received by the Canadian Publishers’ Council (CPC) that “if book publishing is excluded from trade agreements to which Canada adheres, we have no recourse within these agreements should we wish to dispute our treatment.” (*Submission*, Canadian Publishers’ Council, April 28, 1999) The issue then becomes what alternative mechanism can address the concerns of those who argue that

culture is different from other traded products. Is the proposal in the SAGIT report a useful way to proceed?

Details of the special instrument are not set out in the SAGIT report. Witnesses addressed two alternatives: an instrument as part of, or separate from the WTO Agreement. Daniel Schwanen was supportive of a special instrument and saw it operating “within the broad trade framework that would recognize the specific role cultural goods and services played in a society that was different from the role of other types of commodified goods and services.” (*Evidence*, Meeting No. 96, March 9, 1999) Professor Wolfe of Queen’s University suggested that “we should think of doing for culture something like the Reference Paper that was a key part of the Agreement on Basic Telecommunications.” (*Evidence*, Meeting No. 93, March 2, 1999) The thrust of these proposals is for a sectoral agreement on culture within the WTO similar to the Agreements on Financial Services and Basic Telecommunications Services. In reply to a question as to the treatment of culture, Jeffrey Schott of the Institute for International Economics stated that emphasis should be placed on the use of subsidies to promote cultural interests. (*Evidence*, Meeting No. 135, May 12, 1999) These would become part of a WTO agreement. Professor Hart of Carleton University felt that some form of international consensus on culture was probably possible.

(*Evidence*, Meeting No. 120, April 26, 1999, Vancouver)

The alternative view is to pursue an agreement separate from the WTO. The CCA argued that traditional instruments used to insulate culture from the disciplines of international trade agreements should not be the basis of future Canadian negotiating positions. Other witnesses argued for keeping the instrument outside the WTO and beyond the clutches of trade bureaucrats. (*Evidence*, Meeting No. 123, April 28, 1999, Toronto) ACTRA supported development of a global charter of rights for cultural diversity. (*Evidence*, Meeting No. 125, April 29, 1999, Calgary) Since other countries shared Canada's concerns, the CCA was supportive of efforts made by the government to involve other countries and recommended that "Canada should officially convene a conference of international representatives that is specifically designed to draft a protocol or covenant to apply to all international trade and investment agreements." (*Evidence*, Meeting No. 96, March 9, 1999)

Where might such a separate agreement reside? Professor Bernier of Laval University noted that if the convention "is not negotiated under the WTO as such, it can only be done under UNESCO. The problem there is the potential for conflict between UNESCO and the WTO on those issues." (*Evidence*, Meeting No. 104 March 22, 1999, Québec City) The issue addressed by Professor Bernier is that agreement on an instrument outside the WTO, whether in UNESCO or elsewhere, first requires countries to agree that culture should be removed from the obligations that presently apply under the WTO, for example GATT 1994 as it applies to cultural goods and Article IV regarding screen quotas, and the GATS as it applies to audiovisual services. Services are part of the mandatory negotiations that countries have already agreed to and it is doubtful that the United States would support removal of audiovisual services from these negotiations.

In sum, while almost all the testimony supported the SAGIT's proposal for a special instrument on culture, there were differences on how Canada should proceed at this stage. The preference by some for an agreement separate from the WTO is complicated by the continued existence of the WTO agreements and the likelihood that it would be difficult to exorcize culture from these agreements, leaving cultural trade subject to different and probably conflicting obligations. Parties with disputes might have a wider selection for forum shopping and aggravate rather than alleviate the issues being addressed.

Witness Views – Crossover Issues

There are a number of crossovers between culture and other issue areas which further complicate the discussion and which witnesses addressed. Many of the issues concern evolving technologies which create both opportunities and problems. Developments associated with the Internet, electronic commerce, basic telecommunications services, new media, and intellectual property are especially relevant to subsequent negotiations on culture.

Musical and video recordings can be purchased or rented in stores but can also be transmitted and downloaded from the Internet. Newspapers and magazines sell hard copies but also have Websites. An electronic version of *Maclean's* magazine is available to subscribers via the Internet the day before the hard copy is published. Radio and television stations operate Websites which distribute their material packaged with advertising. No licences are issued by the CRTC for Web broadcasting which is an extension of existing broadcasting and no Canadian content rules apply. Technology now permits more direct competition between the less regulated print media and the more regulated broadcast media, while the latter is able to escape the confines of CRTC regulation. This led Jim Carroll, author of some 25 best-selling books on the Internet, to comment that "trying to regulate culture in this new era of technology is a virtual impossibility," (*Evidence*, Meeting No. 99, March 16, 1999) a

view supported by BC•TELUS. (*Evidence*, Meeting No. 124, April 28, 1999, Edmonton) In its May 17, 1999 Report on the Internet and new media, the CRTC states that it does not consider the Internet to be a broadcast medium and will not regulate this area at this time. It reserves the right to reconsider this decision in the future.

Electronic commerce refers to transactions undertaken using the Internet either as a way to place orders for goods and services or for the ordering and delivery of the products, as in the case of financial transactions or acquiring material from databases. Delivery may also be of tangible goods such as a secondhand book ordered over the Internet and supplied by book sellers. It has yet to be decided how WTO trade disciplines will apply to these transactions. In some instances they are no different from previous transactions such as the use of a 1-800 number and credit card to place an order, in which case the provisions of existing trade agreements can probably be adapted to this type of commerce.

The ability to bypass cultural policy measures is in part due to the convergence between telecommunications and broadcasting as illustrated by use of the Internet by broadcasters. Different policy regimes apply. Traditional broadcasting has content rules while telecommunications is subject to a regime that is concerned about access to carriage but has a hands off approach to regulating what content is carried. Those with an incentive to avoid limitations on content will migrate towards delivery mechanisms that are less restrictive. The consequence of these overlapping regimes is that negotiations on culture will appear in different places. Professor Bernier noted that "in the area of basic telecommunications services, they [the United States] might also apply pressure to eliminate any form of content criteria. Because of telecommunications, the United States is now interested in content." (*Evidence*, Meeting No. 96, March 9, 1999)

Those involved in developing new media content are also concerned about the approach taken in cultural negotiations. New media products include video games, virtual reality applications, digital animation, and interactive education and training programs. Some of this content overlaps with traditional cultural industries and a decision will have to be made as to whether these activities belong in or outside the cultural sector. Foreign sales for the output of new media producers are likely to exceed domestic sales and so they have an interest in maintaining open market access.

Control of content such as violence portrayed on audiovisual media, which was highlighted in a presentation by Canadians Concerned About Violence in Entertainment (*Evidence*, Meeting No. 122, April 27, 1999, Toronto) is not a new issue but one that manifests itself in a new way because of technological change. It has a trade dimension because of the ease with which digital signals can cross borders.

Both new and old or traditional media are concerned about the protection of their intellectual property rights for content carried, so that the TRIPS negotiations also overlap with culture. The CPC and WIC Premium Television Ltd. noted the importance of protecting their intellectual property. The CPC is concerned about the ability of technology to allow purchases to be made in Canada from foreign sources and not from the holders of the rights to supply these books to Canadian buyers. WIC is a licensee in western Canada for pay television services (Superchannel, Movie Max! and Viewer's Choice) and has an interest in The Family Channel and Teletoon. Its purchases of program rights from American suppliers are undermined by the ability of Canadian viewers to receive the same programs through the purchase of grey market satellite television services from American suppliers. (*Submission*, WIC Premium Television Ltd., April 28, 1999)

Market access was mentioned by a number of witnesses, indicating the importance of foreign markets for the output of Canadian cultural

products. In book publishing, the CPC noted “our export successes are newsmaking. More than ever before, we need to reach into foreign markets and to be welcome in them,” (*Submission*, Canadian Publishers’ Council, April 28, 1999) and the Association of Canadian Publishers (ACP) reported that “our authors win large audiences abroad and are regularly nominated for international literary prizes. Exports of our books have more than tripled during the 1990s.” (*Submission*, Association of Canadian Publishers, April 28, 1999) At the same time, both organizations supported the continuance of government assistance to the publishing industry and for maintaining domestic ownership and control of book sellers in Canada. The ACP stated that “Canadian writers and publishers could not have accomplished all this in one generation without the support of public policy,” (*Submission*, Association of Canadian Publishers, April 28, 1999) and the CPC supported government assistance provided through loans, loan guarantees, subsidies, and incentives to export. (*Submission*, Canadian Publishers’ Council, April 28, 1999)

A strong argument for the need to promote access to foreign markets came from the Canadian Association of Broadcasters (CAB). “At first glance, many would consider our interest in trade matters to be one of self preservation. All too often ‘cultural’ industries have been seen as solely domestic and protectionist. The truth is that in the broadcasting industry, we will not be able to sustain a domestic presence unless we take an international view.” (*Submission*, Canadian Association of Broadcasters, April 28, 1999) This position is backed by a Pricewaterhouse Coopers study, *Strengthening Canada’s Position in Global Communications: Towards an Export Strategy for Canadian Broadcasters* (Final Report, December 15, 1998).

The CAB submission goes on to describe the exports of Canadian production companies such as Alliance Atlantis and Cinar and Nelvana which engage in coproductions with foreign partners to

finance their programs and sell them abroad. These firms now earn a majority of their revenue in foreign markets and their profitability permits them to strengthen their presence in the Canadian market for Canadian content. A second aspect of the broadcasters’ international outreach is to invest in foreign markets. CanWest Global Communications, for example, owns television services in Australia, New Zealand, and Ireland and at one time Canadian firms owned cable systems in the United States.

Information transfer is a third component of international outreach. CHUM International has formed international alliances to deliver its particular program formats to countries such as Brazil and Finland. In the United States, CityTV, a subsidiary of CHUM, through its co-venture MuchMusic USA, competes with MTV and has more subscribers in the United States than it has in Canada. Quebec-based TVA is also involved in coproductions with broadcasters in Western Europe and with the Fox Network in the United States.

These facts are accompanied by the CAB’s support for the Canadian government to maintain its incentive programs for the broadcasting industry similar to those of many other countries. A study by Coopers and Lybrand filed with the CAB’s submission provides *A Comparative Review of International Broadcasting Policies Across Countries* for the European Union and seven countries (June 30, 1998). Most of these countries have policies similar to Canada. The exception is New Zealand, which has no content quotas or foreign ownership restrictions but does have subsidies. A final item proposed by the CAB is an exploration of limits placed on the foreign ownership of broadcasters with a view to raising these limits. (*Submission*, Canadian Association of Broadcasters, April 28, 1999) Treatment of all these government measures would have to be addressed in any special agreement on cultural trade and investment.

Note was also made of the private contractual problems that Canadian producers had in

accessing foreign markets. WIC Premium Television stated that while American films and television programs are licensed for sale in Canada, “given the integrated nature of these US giants (program producers and distributors), there would certainly be no reciprocal access to the US domestic market.” (*Submission*, WIC Premium Television Ltd., April 28, 1999) CIRPA made a similar comment pointing to the difficulty of MuchMusic gaining access to cable systems in New York City where the systems are owned by Time–Warner, the owners of competing music services MTV and VH1. (*Submission*, Canadian Independent Record Production Association, April 28, 1999) Finally, Ken Stein, Chair of the Cultural SAGIT and Vice–President of Shaw Cable pointed to the absence of Canadian programming services carried by U.S. cable systems. “Try to get your product into the States, try to talk to Michael MacMillan, Robert Lantos or Jim Shaw about the kind of barriers that exist.” (*Evidence*, Meeting No. 96, March 9, 1999)

The importance of foreign market access for Canada’s cultural industries reinforces the Cultural SAGIT Report’s emphasis on the contribution of the cultural sector to the Canadian economy in terms of its core activities of creation, production, distribution, and export (SAGIT Report, 1999, p. 2). One error was noted. According to the CPC, the SAGIT Report contained a “misleading and distorted statistic” concerning the extent of the output of titles published in Canada by Canadian–controlled companies. This points to a general problem about the quality and interpretation of cultural statistics in Canada and elsewhere which makes it difficult to agree on the facts needed to develop domestic and international policies. Much of the debate over cultural policies continues to take place against a background of woefully poor data. Testimony referred to this in a broader context by noting the poor quality of statistics on services generally.

Recommendation 28

In view of the variety of issues on culture raised during the testimony, the Government should initiate discussions with other countries on the range of trade–related topics to be included in any new international agreement on cultural diversity. These should include the Internet, basic telecommunications services, intellectual property, market access, investment, and private restrictions on trade.

Recommendation 29

In future trade negotiations, the Government should pursue the policy alternative contained in the Cultural SAGIT Report for a new international instrument on cultural diversity, if feasible within the WTO framework.

EMERGING TECHNOLOGY-DRIVEN ISSUES

"What Canadians are Saying"

The ABT [Agreement on Basic Telecommunications] was a good starting point for phasing out monopolies and providing the regulatory principles and fundamental commitments needed to introduce competition in basic telecom. In our view, the next set of negotiations must go further, ensuring that commitments are fully implemented. Further liberalization is required for many countries, such as Mexico, India, Brazil, and the majority of the Caribbean states, which have either not made commitments to liberalize basic telecom or have made only small concessions. In reality, there remain significant hurdles to realizing the benefits of full and open competition. The Canadian focus in future trade negotiations should therefore be on measures that will ensure effective competition and market access.

Meriel Bradford, Teleglobe Inc.
Tuesday, April 13, 1999

Beyond setting the right ground rules to address the trade-related issues of electronic commerce, the rapid growth of the global communications infrastructure depends on a continued international commitment towards open market policies that encourage competition and investment. Open markets enable competition, stimulate innovation, economic development and benefit consumers. Our concern is that the Canadian government ensure that the United States not be permitted to impose its will on the international community... to prevent Canadians from realizing the full benefits of competition in telecommunications.

Willie Grieve, BC•TELUS
Wednesday, April 28, 1999 Edmonton

...performance requirements have been an essential policy tool in realizing economic and social objectives. These should not be downgraded or removed through any WTO agreement. For example, performance requirements have been used in broadcasting to meet economic, cultural, and social objectives through such things as production funds and content and programming requirements. In telecommunications, requirements in the form of contributions are used to ensure the universality and affordability of service. As the Internet continues to evolve, some aspects of this new service may come to be considered essential. The ability to require contributions by companies to facilitate universality or other goals may be required.

Michael Janigan and Andrew Reddick, Public Interest Advocacy Centre (PIAC)
Tuesday, March 16, 1999

Electronic commerce is likely to transform a number of service sectors. The strongest impact of electronic commerce is expected to be on financial and telecommunication services... In fact, in Canada 85% of all transactions are [now] conducted electronically. Moreover, a rapid growth in online banking and asset management is forecast for the future...It is therefore crucial that regulatory standards for electronic commerce not become barriers to trade. Countries are encouraged to refrain from adopting any measures which would restrict or curtail electronic commerce, and the WTO should ensure that the development of any new trade policies promotes the free flow of global electronic commerce.

Canadian Bankers Association
Monday, May 3, 1999

For electronic commerce, the rate at which countries will benefit will be dependent on how quickly each liberalizes its markets and adopts predictable trade regimes. Canada has many of the right elements but we are far too slow in implementing [liberalizing measures], and U.S. corporations are establishing market dominance. We need to see the free movement of goods, services and people, with affordable access to computing technology and telecommunications bandwidth. Competition is driving the cost of computing ever lower, and we encourage you to ensure that the same level of competition is available in telecommunications both here and abroad.

Shirley-Ann George , IBM Canada Ltd.
Tuesday, March 16, 1999

ITAC recognizes that most electronic commerce issues will be addressed through negotiations on IT goods, on telecommunications, on financial services, and negotiations in other sectors. However, work does need to be done to ensure that international approaches are taken in several areas with specific electronic commerce focus. These would include information security and encryption. The availability of effective technical tools for enhancing information systems security, such as encryption and cryptographic key management technologies, is a pivotal prerequisite for acceptance and growth of electronic commerce.

William Munson, Information Technology Association of Canada (ITAC)
Tuesday, March 16, 1999

Emerging Technology-Driven Issues

Developments in communications technology define a range of issues which are often referred to in connection with the Internet and electronic commerce (e-commerce). The WTO embraces all types of commerce regardless of how transactions occur, although different obligations apply to services (Chapter 6) than to goods, and particular provisions relate to intellectual property (Chapter 9). There also exists an Agreement on Basic Telecommunications Services and an Agreement on Trade in Information Technology Goods. In this chapter, the Committee addresses the question of whether existing provisions of the WTO can be adapted to changing information technology or whether a special agreement needs to be introduced in a new round of negotiations.

We are cognizant of the fact that research and thinking on many aspects of this topic are at a preliminary stage. In a detailed study of e-commerce, the WTO reported that "we do not know exactly in which direction electronic commerce will develop, but it is likely to change strongly the way we communicate and do business with each other."¹ And the Government's Canadian Electronic Commerce Strategy concluded that "electronic commerce is part of a broader process of economic, social, and cultural change characterized by the globalization of markets and the shift towards an economy based on knowledge and information."² The Committee notes other initiatives, UNCITRAL's Model Law on E-commerce, a statement by the United States, and a Directive from the European Commission.³

Jim Carroll, who has written more than 20 books on the Internet, provided the Committee with examples of how industries would face increased competition. The role of the middleman is changing and a massive re-engineering of firms is taking place. In the case of insurance, he testified that: "The Internet and electronic commerce will fundamentally change the entire nature of their industry in the way they operate, in the way consumers interact with them, and in the way a transaction is undertaken." (*Evidence*, Meeting No. 99, March 16, 1999) Details of similar developments in other industries are described well by Frances Cairncross,⁴ and a recent publication of the CRTC on new media and the Internet is also relevant for understanding the emerging trade issues.⁵ The question facing the Committee is how to address such a fundamental change, one that according to the Brookings Institution "may be as important as the agricultural and industrial revolutions before it,"⁶ in order to determine what the consequences are for trade arrangements.

Some facts

The Internet is a key element for the conduct of e-commerce. It consists of a combination of computers, telecommunications systems, routers, and a protocol allowing different systems to talk to each other in a common language. Morse code was an earlier example of a common language. In 1991, the number of Internet users reached 4.5 million, rising to 60 million in 1996, and will approach an estimated 300 million or 5 % of the

¹ WTO, *Electronic Commerce and the role of the WTO*, Geneva, 1998.

² Canada, Government. *The Canadian Electronic Strategy*. Ottawa. Industry Canada, 1998.

⁵ *The Report on the New Media*, Broadcasting Public Notice CRTC 1999-84 and Telecom Public Notice CRTC 99-14, May 17, 1999.

⁴ *The Death of Distance, How the Communications Revolution Will Change Our Lives*, Boston, Harvard Business School Press, 1997.

³ See United States Executive Office of the President, *A Framework for Global Electronic Commerce*, July 1, 1997, and EU Commission's *Proposal for A European and Council Directive on certain legal aspects of electronic commerce in the internal market*, Nov. 18, 1998.

⁶ Robert Litan and William Niskanen, *Going Digital*, Washington, Brookings Institution, 1998.

Box 8.1 Services Activities in the GATS

The GATS lists eight major categories of services – business, communication, distribution, educational, financial, tourism and travel-related, recreational-cultural-sporting, and computer and related services. Each category is further subdivided into three to six subcategories. For example, communication services is divided into postal, courier, telecommunication and audiovisual; entertainment is a subdivision of recreational-cultural-sporting services. Each of these services lends itself to some form of e-commerce. Providing there are carrier systems and secure means to undertake transactions, e-commerce can be across borders as well as within borders.

world's population by 2001. In the United States, commercial transactions on the Internet accounted for a fraction of 1% of all domestic transactions but this is estimated to increase to about 14% of all consumer purchases in 2007. In 1996, according to the ITU and OECD, Canada had 19.0 personal computers per 100 households versus 36.4 per 100 for the United States.

The Internet is a new means of communication that essentially uses existing equipment. E-commerce refers to the type of business conducted using this system. Without the necessary infrastructure, e-commerce is not possible. Andrew Reddick of the Public Interest Advocacy Centre noted that "most people in the world cannot make a phone call, let alone use the Internet, so we're talking very much about OECD countries with this. They account for well over 90% of the type of trade we're thinking about here." (*Evidence*, Meeting No. 99, March 16, 1999)

In the future, it is estimated that e-commerce will account for 25–30 % of economic activity in industrialized economies, mainly in the following sectors: wholesale and retail trade, financial services, business services, educational, recreational and cultural services, the entertainment industries, and in manufacturing in relation to electronic data interchange (EDI).

A frequently quoted example of e-commerce is an order placed on the Internet for a book from Amazon.com or a Canadian Website such as Chapters.com. These services illustrate one type of e-commerce where the buyer searches on-line

for information about the availability and price of books, undertakes a transaction, and has the hard copy delivered by courier or postal service within a country or across a border. The buyer and seller can be in the same or different countries.

Another type of e-commerce occurs when the search, ordering, and delivery of the product are done on-line, such as when a magazine, video, song, or e-mail message is purchased and/or delivered electronically via the Internet to an individual's computer. The intangible service may be consumed electronically or downloaded onto paper, tape, or disc thereby generating a tangible good which stores the content.

A wide range of activities lend themselves to some form of e-commerce. For example, financial, travel, medical, real estate and audiovisual services, as well as betting, education, prostitution, and shopping for clothes, jewelry, CDs, flowers, food, cars; indeed almost any good or service where the search process is aided by the ability to scan the market for alternative sources of supply and price. A listing of service activities in the GATS, all of which lend themselves to e-commerce, is shown in Box 8.1.

The infrastructure that permits e-commerce to occur, according to the WTO study, consists of six major instruments — the telephone, fax, television, electronic payment and money transfer systems, EDI, and the Internet. To these can be added the computer, cable, and satellite services. These system components reinforce the view that e-commerce is often merely a new or different

Box 8.2 Some 1998/1999 Statistics on New Media in Canada

- 71% of all Websites are American;
- 5% of content on the Internet is Canadian;
- 5% of Internet content is French;
- 80% of Internet content is alphanumeric;
- 150 million people are connected to the Internet (half of whom are in the U.S.);
- 650 to 1,000 multimedia firms in Canada — creating in excess of 17,000 jobs;
- the people involved in new media production are generally 27–32 years of age;
- 45% of new media firms reported that less than 5% of current sales were exported but most firms expect those numbers to be between 5% and 50% of revenues by 2001;
- there are approximately 400 Internet Service Providers (ISPs) in Canada;
- it is estimated that by 2001, approximately 40% of households will have access to the Internet (approximately 5 million households), double the number from 1998;
- Canadians spend over 20 hours a month online, with 61% connecting at least 7 times a week. The most common uses are e-mail (77%) and accessing information (71%).

Source: CRTC Report, May 17, 1999

way of transacting business. Professor Wolfe stated that “technology creates the possibility for new forms of business that cross borders... the process has been going on for years, as countries grapple with these issues.” (*Evidence*, Meeting No. 93, March 2, 1999) For example, on-line shopping for goods is the modern equivalent of the mail order catalogue used by retail stores, and of television shopping using a 1-800 telephone number and credit card to order goods. Jewelry and clothing have been popular items sold by a combination of television and telephone. In 1996, American telephone companies carried about one hundred million toll-free calls per day to more than eight million 800 numbers. Europe does not make extensive use of 800 numbers, which are viewed as suppliers offering a free service. Telemarketing was further facilitated in 1997 when firms obtained global toll-free numbers so that the same number is used by buyers regardless of where they are located. Satellite television can be used to advertise products using the one number for ordering rather than presenting different numbers for each country. Consumers benefit from increased competition in retail markets and the system encourages the growth of

international trade.

Other examples of e-commerce as a new method for conducting familiar transactions are automated teller machines that dispense cash and allow customers to make balance inquiries; debit cards that permit transfers of money between accounts; and smart cards containing chips that can be loaded up with money for use in making purchases such as telephone calls or travel on public transportation. To date, the most extensive use of e-commerce, and possibly the one with the most potential, is for EDI whereby documents and information are exchanged between the computers of two businesses without paperwork and direct human intervention. EDI has been estimated to result in cost savings of 5–20% and time savings of 50 %.

These types of transactions will proliferate as more households gain access to the Internet. It is estimated that about 20% of Canadian households presently have access and this will rise to 40% by 2001. Most common usage is for e-mail (77%) and accessing information (71%). Further statistics on new media in Canada are shown in Box 8.2.

Electronic commerce is part of the knowledge revolution. In the May 1998 ministerial meeting WTO ministers declared a standstill on the imposition of customs duties on electronic transmissions and called for a comprehensive work program. This matter was the subject of an OECD ministerial conference in Ottawa last October... is important to note that the world community has concluded that this new way of communicating needs to be addressed at the international level in conjunction with the development of domestic approaches. It is bound to feature prominently at the ministerial conference later this year.

John Weekes, Ambassador of Canada to the
World Trade Organization
Evidence, Meeting No. 133., May 11, 1999

Which International Agreements Apply to E-Commerce?

E-commerce depends on having reliable infrastructure systems in place. The WTO sectoral Agreement on Basic Telecommunications Services and the Information Technology Agreement affect system and equipment availability. As trade is liberalized in the equipment and services used by e-commerce, so more goods and services are likely to be traded internationally in this form. William Munson, Director of Policy at the Information Technology Association of Canada (ITAC), noted "that most electronic commerce issues will be addressed through negotiations on IT goods, on telecommunications, on financial services, and negotiations in other sectors." (*Evidence, Meeting No. 99, March 16, 1999*)

Meriel Bradford, Vice-President of Teleglobe Inc, testified that the firm's "success as a global company is largely attributable to telecommunications liberalization and our government's efforts to open markets abroad." (*Evidence, Meeting No. 112, April 13, 1999*) Noting the linkage between e-commerce and infrastructure, she urged the government to consider telecommunications services as a priority sector for further liberalization. This would include negotiating the abolition of foreign investment restrictions for telecommunications services in other countries and the removal of

requirements for a foreign partner when entering these countries. At the same time there is a need to relax Canadian restrictions on foreign investment in domestic facilities. Other non-tariff barriers in telecommunications include a lack of transparency for the process of interconnecting services and problems associated with public procurement. (*Evidence, Meeting No. 112, April 13, 1999*)

Infrastructure issues were addressed by ITAC, which urged the government to extend the Information Technology Agreement to apply to more countries and more products and to promote a global approach to standards development and implementation. (*Evidence, Meeting No. 99, March 16, 1999*) The need for uniform technical standards and an international monitoring agency, probably outside the WTO, was proposed by Professor Kindred of Dalhousie University. (*Evidence, Meeting No. 107, March 24, 1999*)

Aside from access to and reliability of the necessary infrastructure, the conduct of e-commerce raises a range of issues, including the security of transactions, privacy, the use of digital signatures, protection of intellectual property, taxation, the determination of the jurisdiction in which transactions occur, liability for material transmitted, and control over content. These issues are addressed in the specialized WTO and Canadian studies on e-commerce, the Internet and new media, and are debated in journal articles and the press. Witnesses testified in connection with a

number of these issues such as privacy and security.

John Gero illustrated how e-commerce can blur the distinction between modes of delivery defined in the GATS, namely consumption abroad and cross-border delivery of a service. He used a banking example to illustrate some of the difficulties. "Suppose a bank sets up a Web page in the United States and offers loans to Canadians. I avail myself of that service in the United States or I deposit money in that bank from Canada. Can this bank even legally do that, or is it actually supplying a service without getting all of the regulatory approvals required under Canadian banking regulations? These are some very complicated issues that we are going to have to work our way through." (*Evidence, Meeting No. 90, February 11, 1999*) Related issues of jurisdiction and taxation were raised by the Canadian Council for International Business which also pointed to the problem of determining when an item traded as e-commerce should be considered a good or service. (*Evidence, Meeting No. 123, April 28, 1999*)

Each industry sector affected by e-commerce and the Internet will have its own set of particular issues so that generalizations are difficult to make until more details of the operations of each sector are known. With respect to broadcasting and telecommunications, some further information is available as a result of the CRTC's May 1999 Report on new media. The CRTC has concluded that the "majority of services now available on the Internet do not fall within the scope of the *Broadcasting Act* and are outside the Commission's jurisdiction." For those "undertakings that do fall under the definition of broadcasting, the Commission has concluded that regulation is not necessary to achieve the objectives of the *Broadcasting Act*." The Report also draws particular attention to the need to address problems associated with the distribution of illegal and offensive content. (CRTC PN 1999-84, Summary) The impact of Internet telephony on traditional telephone service is also

noted, and the CRTC is on record as encouraging Internet telephony as well as competition in telephony. By stating this position, the CRTC has signaled that as far as its mandate is concerned it will not interfere with Internet and new media undertakings, many of which relate to e-commerce. (CRTC information release in connection with CRTC PN 1999-84 and CRTC 99-14, May 17, 1999)

Another dimension of e-commerce concerns intellectual property, for which there are specialized international agreements as well as the TRIPS provisions in the WTO. Much of the trade on the Internet involves selling or licensing information, cultural property, and technology protected by intellectual property rights. Digital transmission of content has made it more difficult to protect this type of property from piracy. Not only copyright but patents, trademarks, trade secrets, and domain names are affected. Some Internet users have, for example, used the domain names of popular branded products and attempted to sell these to the owners of the brands.

In the past, intellectual property regimes have adapted to changing technology sometimes with the creation of new types of rights, such as rental and performing rights, and to the introduction of measures such as blank tape levies to address the problems of piracy. The issue of geographic rights for intellectual property and the problem of dealing with parallel imports is an example of an issue that has already been addressed but will need to be adapted to transactions involving e-commerce. Determining the jurisdiction to be used in the cross-border sale of intellectual property is another issue that will affect how taxes are levied on these types of e-commerce transactions.

The Canadian Recording Industry Association (CRIA) expressed particular concern about the impact of e-commerce on the protection of rights in music. It noted the passage in 1996 of two important international instruments, the WIPO Copyright Treaty and the Performances and Phonograms Treaty which require that Canada

and other member countries update their copyright legislation. Canada has not yet amended its Copyright Act and is urged to do so. In the forthcoming negotiations, CRIA told the committee that "Canada must take the initiative to insure that global trade in intellectual property products and services addresses the convergence of communications and copyright law." (*Submission*, Canadian Recording Industry Association, May 3, 1999)

Agreements such as the WTO recognize the need for and legitimacy of national industry regulation. The concern is over the design and administration of regulations. In general the principles are that regulations should be non-discriminatory and should be the least trade-restrictive possible; that is, no more trade-restrictive than necessary to achieve its objective. These principles will apply to regulation of the Internet and e-commerce.

As more public procurement is undertaken by electronic search and ordering mechanisms, WTO rules as contained in the Agreement on Procurement, to which 26 WTO members are signatories, may have to be modified to ensure that non-discriminatory and transparent methods are used in relation to e-commerce. In a related field—the use of airline reservation systems—the ordering by which flights are listed can make a difference as to which airline gets a particular reservation. Similar circumstances may apply to the listing of potential suppliers for government contracts in order to ensure fair market access. In the private sector, the preferred position of a service and search engine is a major issue in the antitrust case involving Microsoft and the use of its software.

In general, the treatment of e-commerce as far as market access issues are concerned will depend on which trade rules apply, in particular GATT or GATS rules for goods and services respectively. As the WTO cases involving periodicals and bananas have shown, the decision is difficult when goods are bundled with services – the WTO

report on e-commerce notes that "any product is a combination of goods and services" – which raises the question of how the two sets of differing obligations can be applied.

The foregoing illustrates the complexities outlined by the witnesses for the benefit of the committee, indicating that Members of the WTO have first to understand what these new forms of business are before discussing how to assimilate them into norms and principles of the trading system. (*Evidence*, Meeting No. 93, March 2, 1999) Andrew Reddick, Director of Research for the Public Interest Advisory Centre, testified that "in terms of e-commerce, I would agree there are many existing laws that already apply to on-line transactions. Some of them need to be updated to deal with electronic commerce." (*Evidence*, Meeting No. 99, March 16, 1999) The Canadian Bankers Association stated that "electronic commerce does not represent a new area for negotiation but rather falls within the existing commitments under the GATS." (*Submission*, Canadian Bankers' Association, May 3, 1999)

Faced with a great deal of useful input from the witnesses and a series of detailed reports in Canada and elsewhere, the Committee is impressed by the thought that has gone into dissecting a range of issues that affects not only trade but the organization of many economic activities in the public and private sector. To date, we agree that e-commerce and related issues of the Internet and new media are a work in progress and that there is insufficient evidence to suggest that a separate agreement within the WTO is needed to address these issues. Areas that appear ripe for further research are in understanding how the technology is affecting different sectors, promoting further liberalization in telecommunications and information technology products, and adapting intellectual property provisions to new forms of trade. Beyond this, there is a need to be prepared to adapt to the unexpected.

Recommendation 30

The Government should support the pursuit of negotiations on e-commerce, the Internet, and new media within the context of existing WTO agreements.

Further research should be undertaken in determining the particular issues affecting the major sectors affected by e-commerce such as retail and wholesale trade, professional services, education, the cultural industries, and others. Attention should be given to ensuring the appropriate controls on anti-social content on the Internet.

In addition, the Government should promote:

- further liberalization of the telecommunications sector;
- expansion of the Agreement on Information Technology; and
- measures to ensure appropriate protection of intellectual property traded as e-commerce.

INTELLECTUAL PROPERTY RIGHTS IN THE CONTEXT OF THE WTO

“What Canadians are Saying”

The value of TRIPS and the necessity of ensuring effective enforcement of patents and other intellectual property rights can be seen in the example of our own pharmaceutical industry. Our industry in Canada has been a success story; in fact in many ways it's been a global success story. And it's been a success story because of one critical factor, which is Canada's movement towards higher international standards and rules governing intellectual property for patent protection. That key factor has been essential in creating in Canada a strong and positive environment for new investment in R and D and jobs within the innovative pharmaceutical industry.

Terry McCool , Association Canadienne de l'industrie du médicament
Thursday, March 25, 1999 Montreal

...under the existing WTO TRIPS agreement Canada is now denied the sovereign authority to return to even a modified system of 'Compulsory Licensing' for drugs. For seventy years, this was very effective in controlling Canadian drug prices. While 'Compulsory Licensing' may not be the only effective tool for controlling drug prices, it has a useful role to play. And we Canadians are now denied our sovereign authority to employ that tool.

Elizabeth Reid, Alberta Friends of Medicare Society
Wednesday, April 28, 1999 Edmonton

We don't want to trade away the ability of governments to ban tobacco advertising, to sue tobacco companies, or to demand healthier packaging and labelling.

Cynthia Callard, Physicians for a Smoke-Free Environment
Thursday, April 15, 1999

The ICHRDD is particularly concerned that the WTO has no means of protecting the intellectual property rights on indigenous knowledge and genetic heritage which are held collectively by indigenous communities through century-old traditions.

Warren Allmand, International Centre for Human Rights and
Democratic Development
Wednesday, March 24, 1999 Montreal

The likely impact of [TRIPS] provisions on biodiversity and third-world agricultural production has raised considerable concern. In fact, several non-government organizations have assailed these rules as authorizing the wholesale piracy of genetic resources from developing countries and the appropriation, without compensation, of traditional and indigenous knowledge. Southern NGOs point to the practices of certain pharmaceutical and agri-corporations which have taken out patents on products and processes derived from genetic resources they have simply appropriated from developing countries. Having thus acquired a global mandate to monopolise the use of these 'innovations', those same corporations can then enforce their new proprietary rights even in those countries from which the genetic resources were originally taken....Because informal innovation is not accorded any protection, the genetically diverse resources of wild germplasm or 'land races' are excluded from the proprietary regimes of the TRIPS agreement. Not only does this mean that these resources can be appropriated without compensation but it also means that no financial incentive exists to conserve these resources.

Steven Shrybman, West Coast Environmental Law Association
Tuesday, April 27, 1999 Vancouver

The unbridled advancement and use of technology poses challenges for publishing. The 'information highway' will continue to be woefully short of validated content unless it is safe for copyrights to travel the highway. Consumers of copyright material should not be able to arbitrarily steer that material down the exit ramp without paying tolls along the way. Canada's content industries will either seize the commercial opportunities presented by technology or they will be left behind, depending upon the government's resolve to protect intellectual property and to provide incentives for its development in a digital environment that circles the world.

Jacqueline Hushion, Canadian Publishers' Council
Wednesday, April 28, 1999 Toronto

...it is imperative the rules and laws keep pace with technological change...By this we mean that in tomorrow's increasingly 'wired' and related world, laws protecting property owners will need to be very similar in every country to avoid delivery services operating without protection and not paying property owners.

Brian Chater, Canadian Independent Record Producers
Wednesday, April 28, 1999 Toronto

If we do not stress protection for authors, creative artists and performing artists, [in intellectual property rules at the WTO] we could put forward a system based solely on industrial interests. As far as acceptance by the general public goes, it is definitely much easier to make people understand that these rules are necessary because, ultimately, they protect our creative artists, than it is to maintain that they protect some huge, anonymous economic interests.

Professor Ysolde Gendreau, Faculty of Law, Université de Montréal
Thursday, March 25, 1999 Montreal

A WTO Agreement on Intellectual Property

International treaties on intellectual property rights have been in existence since the end of the last century. They have dealt in turn with industrial property, trademarks, industrial designs and models, patents, copyright, etc. The World Intellectual Property Organization (WIPO), created under the 1967 *Convention establishing the World Intellectual Property Organization*, became the international organization responsible for enforcing the treaties on intellectual property in effect at that time.¹ Since 1970, the year the convention came into force, the WIPO has been the forum in which the development of existing treaties and the negotiation of new treaties are discussed. The participants in those treaties have long criticized the fact that the WIPO has no mechanism to force compliance.² The application of treaties has always been voluntary.

The participants in the Uruguay Round of negotiations agreed that the time had come to change the situation and force the application of some of these treaties. The *Agreement on Trade-Related Aspects of Intellectual Property* (TRIPS Agreement), described as the most comprehensive agreement on intellectual property, came into being with the conclusion of the Uruguay Round of multilateral trade talks. In contrast to the WIPO treaties, the TRIPS Agreement required the Members to implement and meet the minimum standards it prescribed.³

The TRIPS Agreement is not, strictly speaking, a trade liberalization agreement, as it does not prescribe measures designed to open up markets and facilitate free trade. However, it does facilitate free trade in that it prescribes measures

for protecting intellectual property rights within the context of more open markets.

The TRIPS Agreement deals with three main elements:

- The establishment of standards in the area of intellectual property rights.
- The integration of the standards into the members countries' legislation and the creation of an internal mechanism for enforcing the standards.
- The application of dispute settlement procedures and rules to disputes between members over implementation of the agreement.

Some of the provisions in the TRIPS Agreement apply to all seven target areas of intellectual property rights (national treatment, MFN treatment), while others set standards applicable to specific areas. The seven areas in question are: copyright and neighbouring rights; trademarks; geographical indications; industrial designs and models; patents; layout designs of integrated circuits; and protection of undisclosed information. The TRIPS Agreement also deals with the control of anti-competitive practices in contractual licences.

While other WTO Agreements came into effect on January 1, 1995, the Members had an extra year to apply the TRIPS Agreement, that is, until January 1, 1996.⁴ The additional time allowed many developed countries to adapt their legislation to the prescribed standards, if they had not already done so, and to set up the administrative structures needed to ensure that intellectual property rights would be respected within their jurisdiction. Developing countries

¹ The WIPO replaced the international organization called the United International Bureaux for the Protection of Intellectual Property, which included the international administrative bureau created by the 1883 *Paris Convention for the Protection of Intellectual Property* and the bureau created by the 1886 *Bern Convention for the Protection of Literary and Artistic Works*. See *World Intellectual Property Organization*, Geneva, WIPO, July 1998.

² B.K. Zutshi, "Bringing TRIPS into the Multilateral Trading System", in Jagdish Bhagwati and Mathias Hirsch (ed.), *The Uruguay Round and Beyond: Essays in Honor of Arthur Dunkel*, The University of Michigan Press, n.d., p. 41.

³ Ysolde Gendreau, Professor of Law, University of Montreal, *Evidence*, Meeting No. 110, on March 25, 1999, Montreal.

⁴ TRIPS Agreement, article 65.

and economies in transition were given five years to implement the TRIPS Agreement, while the least developed countries were given 11 years.

It is perhaps premature to take stock of application of the TRIPS Agreement, because very few Members have finished implementing the agreement as the time period given to the less developed and least developed countries has yet to expire. Some witnesses nevertheless shared their concerns about this aspect with the Committee.

As we have just mentioned, the TRIPS Agreement involves seven areas of intellectual property rights. Intellectual property is a very extensive field and deserves to be examined in greater detail than we have been able to do within the confines of this study. We will therefore limit our comments to a few of the specific elements that were discussed by witnesses in their testimony to the Committee.

Copyright

The use of modern means of communications to disseminate, transmit and sell artistic and literary works creates serious problems in terms of protecting copyright. Modern technology can be used to sell sound recordings on the Internet without a physical medium (record, cassette, CD) changing hands. The buyer records the work on some component of his or her computer (usually a computer memory chip). Pirating of works is common in that type of environment, and the current regulations seem unable to deal with the situation. The goal is not to prevent the transmission of works by electronic means, but to ensure that copyright is respected and any applicable royalties are paid.

The Canadian Recording Industry Association (CRIA)⁵ made that observation in its brief to the Committee and put forward the theory that having all members of the WTO ratify two recently signed WIPO treaties might possibly improve the situation. The treaties in question are the *WIPO Treaty on Copyright* and the *WIPO Treaty on Performances and Phonograms*. Their purpose is in part to update in multilateral treaties the standards and legal principles governing copyright in the case of electronic commerce.⁶ Both treaties were adopted by the WIPO Diplomatic Conference on December 20, 1996. They have not yet come into force, although it is said that a number of signatory countries have already begun the process of implementation and ratification.⁷ According to the CRIA, the recording industry expects the Government of Canada to begin the process soon.

The means used to transmit artistic and literary works have changed dramatically in recent years. It is therefore essential that the legislation be amended to afford adequate protection for artistic and literary works regardless of how they are transmitted. The CRIA holds the view that the upcoming negotiations should allow the adoption of new protective measures based on the treaties referred to above.⁸

Glen Bloom, President of the Patent and Trademark Institute of Canada, expressed a similar point of view regarding the need to update copyright legislation so that it meets the requirements of electronic commerce. However, he was cautious regarding future WTO negotiations. He is arguing that Canada must first adopt a national policy on these matters instead of allowing its trading partners to impose a policy on it.⁹

⁵ The brief which was provided as documentation was submitted by the Canadian Independent Record Producers Association.

⁶ *Submission, CRIA, Evidence, Meeting No. 110*

⁷ Ysolde Gendreau, *Evidence, Meeting No. 110, March 25, 1999, Montreal*

⁸ *Submission, CRIA*

⁹ *Evidence, Meeting No. 112, April 13, 1999.*

Drug patents

Term of protection applicable to drug patents

Article 33 of the TRIPS Agreement states that members must protect patented inventions for 20 years from the date on which the application is filed. The Canadian legislation appears to be in line with that article. Bernard Houle and Terry McCool of the Canadian Drug Industry Association, told the committee that some members of the WTO (European Union, United States, Japan) extended that term of protection by a period equal to the time between the date the application is filed and the date the patent is issued which public officials spend reviewing the case. This “patent restoration” extension can be as long as five years in some cases. According to Mr. Houle: “The most important thing for Canada is recognizing that the drug industry is a worldwide industry and that Canada is part of the worldwide industry, but in order win a large share of that industry and attract investment and jobs, Canada has to remain competitive with the other G7 countries.” (*Evidence*, Meeting No. 110, March 25, 1999, Montreal)

Since the effective term of protection associated with a patent is a major factor in drug companies’ investment decisions, these witnesses said they were afraid that Canadian drug companies would lose investment if the term of protection associated with a patent were shorter than the term granted by other countries. They therefore believe that Canada might lose investment in the drug industry.

Speaking on behalf of the Canadian Drug Manufacturers Association, Jim Keon told the Committee in contrast that the Government of Canada should resist the efforts of drug companies that want to renegotiate the TRIPS Agreement to extend the term of protection applicable to their patents.

Storage of generic drugs

Under the *Patent Act*, a manufacturer of generic drugs can store a patented product in the six months prior to the patent expiry date. When the patent expires, the manufacturer can then sell its product immediately. A complaint from the European Union about this provision in the Canadian statute is currently before the WTO.¹⁰ The main argument put forward by the EU is based on the wording of article 28 of the TRIPS Agreement, which states that a patent gives the patent holder exclusive rights, where the patented item is a product, to manufacture that product. As long as the patent has not yet expired, storing the product would not be permitted under the Agreement, and the relevant section of the *Patent Act* would therefore be at odds with Canada’s commitments under the WTO Agreements.

The Canadian Drug Manufacturers Association told the committee that the exceptions in article 30 of the TRIPS Agreement justify Canada’s measure on storage. Article 30 states, “Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.”

Regulatory authorization regarding patented drugs

The *Patent Act* allows authorization to be granted so that a drug manufacturer can develop the formula for a new generic product or test a patented product with a view to marketing the product. Before a product can be sold, Health Canada approval must be obtained. Procedures and testing can take years. As stated earlier, the European Union challenges this section of the Canadian legislation on the grounds referred to above, that is, on the grounds that 20 years of protection is not effective.

¹⁰ Canada – Patent Protection for Drug Products, WT/DS104.

The Canadian Drug Manufacturers Association told the committee that the time it takes to have a new product approved warrants the Canadian measure, which is also permitted, it would appear, under article 30 of the TRIPS Agreement, which we just quoted above. The CDMA believes that the Government of Canada should defend its current practices under article 30 of the Agreement, and if ever they were found to be at odds with its commitments, Canada should seek clarification of article 30 to ensure that such practices were permitted.

Discussion of drug patents during the upcoming negotiations

In its brief, the Patent and Trademark Institute of Canada told the Committee that the Government of Canada should avoid any discussion of the issue of drug patents unless a clear consensus on the matter emerges in Canada. It explained to the Committee that there is currently a great deal of tension between consumers and the provinces, which pay for drugs and want to ensure that drug prices are as low as possible, and innovative drug companies, which expect a fair return on their investment.

The Committee agrees with the PTIC. It is better to go the wise route and look for a national consensus before discussing the issue of drug patents in the upcoming negotiations.

Canada and the upcoming negotiations

Witnesses also raised other possible points of discussion that may arise during the upcoming WTO negotiations. For example, Owen Lippert mentioned compulsory licences, patenting of living organisms, trade secrets, geographic exhaustion of rights and basic protection of data. Ysolde Gendreau underlined the use of new technology in transmitting artistic and literary works. René Côté mentioned more specifically, licences to use genetically modified seeds. The

Patent and Trademark Institute of Canada added border measures to the list.

We stated earlier that the WTO system was a system of rules governing trade liberalization. We also pointed out the advantages of such a system compared with a system based on economic or political power. The rules *should* make the system more predictable and more equitable for the partners.

Stephen Clarkson of the University of Toronto pointed out to the Committee that if the rules are set by the party with the strongest bargaining position, there is a chance that the rules will be established so as to accentuate the gap between the weak and the strong. He cited as an example the TRIPS Agreement, which he believes reinforces the “monopolistic power” of multinational corporations that operate in the knowledge sector. The “What Canadians are Saying” section at the beginning of this Chapter notes other related concerns raised by some witnesses. In the Committee’s view, it is essential to work towards a public interest position on intellectual property protection which satisfies the interests of all members of society

Canada’s policy on intellectual property must continue to be developed with public and parliamentary consultation and in doing so must try to strike a balance between the interests of the parties seeking protection while also bearing in mind the rights of consumers and citizens.

Protecting intellectual work is the key to that policy, and the TRIPS Agreement, like other international treaties on intellectual property, is based on the same principles. Intellectual work deserves the same recognition as other forms of work. In an information-based (knowledge-based) society, it is essential that adequate protection be given to those who create that knowledge. Innovation and the development of knowledge are too important in our society to be neglected. As Professor Ysolde Gendreau of the University of Montreal’s Faculty of Law stated: “By focusing on the importance of

creators, be they artists or artist-performers, we highlight the human being, the cultural element, the personal element of the system that protects

intellectual property rights.” (*Evidence*, Meeting No. 110, March 25, 1999, Montreal)

Recommendation 31

The Government should continue its consultations with the parties concerned so that it can develop a coordinated national policy on intellectual property that represents all Canadian interests. The Committee recommends that policy be defended in the upcoming WTO negotiations.

INVESTMENT AND COMPETITION POLICY ISSUES

“What Canadians are Saying”

We believe that the World Trade Organization's only design is to help large corporations with little or no concern for public interests. The aspects of the MAI which we [found] objectionable are too numerous to be mentioned in detail here. We feel that future talks [on investment] should not resume on the existing bases established [for the MAI] in Paris. Any future negotiations should include clear performance requirements and regulations regarding the fair expropriation of corporate assets to serve vital community needs.

Denis Gaumond , Council of Canadians, Guelph Chapter
Thursday, April 29, 1999 London

...the lesson we should not take away from [the MAI negotiating process at the OECD]... is that it's inappropriate to negotiate investment rules. I think in the kind of world that we live in today, it is very appropriate to have investment rules to deepen the impact of rules on what governments can do.

Professor Michael Hart, Centre for Trade Policy and Law
Monday, April 26, 1999 Vancouver

While we support the inclusion of investment on the WTO agenda as a high priority, we also want to ensure that in so doing, the WTO does not enter into a highly-politicized, acrimonious and fractious debate that will bog down in endless discussion and potentially harm the Organization in the long run... Specifically, the critical concept of 'expropriation' of foreign investment which triggers the binding dispute settlement mechanism needs to be better defined. Bona fide and legitimate areas of regulation and law-making by governments, where there is no real taking away of an asset involved, should be carved out from the agreement. Other aspects of the investor-state provisions, including issues of secrecy and lack of openness in the process, as under the current rules in the NAFTA, must also be addressed.

Jayson Myers, Alliance of Manufacturers & Exporters Canada
Friday, April 30, 1999

The postponement of MAI negotiations has provided the House of Commons standing committee with an opportunity to dissect the flawed pieces of the MAI and improve upon them.

Dr. Raj Pannu, MLA, New Democratic Party of Alberta
Wednesday, April 28, 1999 Edmonton

Canadian sovereignty will not be adversely affected by an agreement on investments. Canada will retain its ability to agree to major business mergers or acquisitions which involve Canadian companies, and to continue to set limits on foreign control when businesses under government control are privatized. There will be no repercussions on Canadian social programs. ...Moreover, Canada's commitment to such an agreement merely requires us to treat foreign investors in Canada the same as our own investors. Foreign investors would therefore be subject to the same laws and regulations in all areas, including the environment, health, labour and culture.

Mr. Jacques Garon, Conseil du patronat du Québec
Wednesday, March 24, 1999 Montreal

...MAI-type agreements should be opposed from a Canadian public interest perspective, and should not be promoted from the narrow perspective of Canadian corporations which are major investors in developing countries.

Robert White, Canadian Labour Congress
Tuesday, April 27, 1999 Toronto

If the WTO [members] decide...to negotiate investment rules then I would recommend that the Canadian government's goals in any negotiation give equal weight to measures that ensure the rights of states to legislate and regulate to preserve cultural identity, the quality of the environment and social cohesion as they ...protect the interests of incoming and outgoing investors.

Professor Elizabeth Smythe, Concordia University College of Alberta
Wednesday, April 28, 1999 Edmonton

The principles of most-favoured nation and national treatment are insufficient to ensure that investment is handled in a fair and equitable manner because the requirements of an investment regime are structurally different from those for the liberalization of trade in goods or services. Productive investment has a long term time horizon and can involve numerous changes over the lifetime of an investment. A foreign investor acquires continuing rights in the host country, a kind of economic citizenship, and with these rights come obligations. The international community should find a forum other than the WTO for the negotiation of a multilateral framework of rules governing international investment.

David Runnalls, International Institute for Sustainable Development
Thursday, March 18, 1999

We'd like to see a moratorium on investment protection rights until the impact on public health is better understood.

Dr. Cynthia Callard, Physicians for a Smoke-Free Environment
Thursday, April 15, 1999

The Canadian government should oppose comprehensive negotiations on investment being moved to the WTO until sufficient institutional safeguards are in place to ensure the primacy of international human rights law.

Warren Allmand, International Centre for Human Rights and Democratic Development
Wednesday, March 24, 1999 Montreal

The whole thrust of competition policy is to keep a system open to innovation, by not allowing the big people to close off the little people from being able to innovate successfully. We have to keep in mind that competition policy has to keep the pot boiling.

Professor James McNiven, Business and Public Administration, Dalhousie University
Wednesday, March 23, 1999 Halifax

The development of international competition policy depends on the pre-existing national system. It is legitimate for and must be expected that nations will have different competition laws in view of the differences in their local political, social and economic realities...Individual nations' preferences will chart the future course of international competition policy. Emphasis among nations may vary greatly as to the proper scope of the term competition policy... Likewise, emphasis among nations may vary greatly as to the national rules that should be co-ordinated.

Francine Matte, Lawson A.W. Hunter and Randall Hofley, Stikeman, Elliott
Tuesday, April 27, 1999 Toronto

I think it is true that competition policy needs to be addressed in the WTO. I don't think it needs to be addressed in the manner of coming up with a sort of global system of competition policy. I think it needs to be addressed in the context of putting a set of boundaries around national rules, which imposes some degree of harmonization on the national rules. I think the classic example of what the problem is here is the Boeing-Lockheed merger in the U.S., in which you had two U.S. companies merging and the European Union saying "We're not going to let you operate in Europe unless you comply with our particular competition policy rules." In that situation, you are battling competition policy authorities from the EU and the U.S., and that could happen in lots of other countries as well. So it seems to me we need to come up with some sort of overarching structure.

Professor Brian Russell, School of Business, Dalhousie University
Wednesday, March 24, 1999 Halifax

Investment and Competition Policy Issues

Investment and competition policy (CP) are two of the new issues that may be included in a future round of multilateral negotiations. In one sense, inclusion is unavoidable in that both topics are already part of the WTO. The question then becomes whether the present treatment of investment and CP needs to be amended and/or extended.

In the negotiations leading to the GATT in 1947, provisions for an agreement on investment were discussed in the proposal for an International Trade Organization. Coverage was also to be extended to restrictive business practices due to concern with the formation and operation of international cartels. No agreement was reached on either investment or CP and neither issue reappeared in this forum until the Uruguay Round. In the interim, discussions and negotiations took place in the Organisation for Economic Co-operation and Development (OECD) and in various United Nations organizations such as United Nations Conference on Trade and Development (UNCTAD) and the International Labour Organization (ILO). At the same time, countries addressed investment issues by negotiating bilateral investment treaties, known in Canada as Foreign Investment Protection Agreements, of which there are presently 23 involving Canada and about 1,600 worldwide. At the regional level trade agreements such as the NAFTA and bilateral trade agreements include provisions relating to investment, which is also part of the FTAA initiative.¹

Investment concerns

While extensive obligations are already in place for trade in goods and services, trade agreements such as NAFTA have only partial rules for

investment. In the WTO, investment-related rules are contained in the Trade-Related Investment Measures (TRIMs) agreement and in the GATS. Measures that require investors to perform in certain ways, such as restricting their imports and undertaking a certain minimum of exports or employment, are dealt with under TRIMs. As was explained in Chapter 5, the GATS provides for the right of establishment, which permits foreign service providers to enter a market by providing a commercial presence in those service sectors where countries have made commitments. The Agreement on Subsidies and Countervailing Measures provides disciplines on subsidies involving investment in start-up operations; and the Agreement on Government Procurement provides for non-discriminatory treatment for domestic and foreign-owned suppliers for procurement covered by the agreement. In the NAFTA, Chapter 11 is devoted to investment and the list of prohibited performance measures is more extensive than that found in the WTO.

The stimulus to develop rules for foreign direct investment (FDI), that is, long term investment abroad in productive activities, as opposed to short term and often speculative capital flows, has arisen out of the increasing flows of FDI and the view that investment and trade are complementary activities. In some instances, investment may be a substitute for trade, for example in circumstances where tariffs discourage the import of goods and services, but increasingly and with declining tariff barriers, investment and trade are found to be complementary activities and both are used to service foreign markets. Industry Canada notes that FDI often generates increased trade opportunities for Canadian exporters. If liberalization requires the removal of barriers,

¹ A further description of the context for an international agreement on investment are contained in *Canada and the Multilateral Agreement on Investment*, Third Report of the Standing Committee on Foreign Affairs and International Trade, December 1997, pp. 43–50.

logic suggests that investment as well as trade should be subject to rules.

Canada has an interest in investment both as a host and a home country; that is, as a recipient of FDI and as an investor abroad. Historically, the stock of FDI in Canada has exceeded the stock of investment abroad, but in 1996, according to Statistics Canada, total investment abroad exceeded FDI in Canada for the first time. Canada's outward investment flows have also become more diversified so that the stock of FDI in the United States, which was 70% of the total outward stock, has now fallen to 50%. New destinations for Canadian FDI are Latin America, the Caribbean, Western Europe and Asia. Further data on FDI are contained in the Report's Introduction, in Box 1 and in Chapter 2.

If a more comprehensive agreement for FDI were introduced, it would aim at rationalizing the bilateral investment treaties and expand coverage of the treaty provisions to those developing

countries with which Canada has no such treaty. An examination of the provisions of the bilateral treaties indicates the type of issues that Canada would likely consider relevant for negotiation in a multilateral agreement. The items listed in Box 10.1 summarize the investment related issues already included in a number of Canada's trade agreements.

According to Industry Canada, specific gaps in existing rules under the WTO include: the absence of principles of non-discriminatory treatment of investors in goods sectors; a lack of any transparency commitments for policies currently in place for investment in the goods sector; no commitments on the transfer of funds in the resource and manufacturing sectors; the absence of provisions on performance requirements for services; and, no protection against expropriation without compensation. These gaps relate only to FDI outside NAFTA and countries with which Canada has bilateral investment treaties, at present a small proportion of total outward investment.

Box 10.1 Issues covered in the NAFTA, the Canada–Chile Trade Agreement, and the bilateral Foreign Investment Protection Agreements with a number of developing countries

- definitions of investment and investor;
- minimum standard of treatment: fair and equitable treatment in accordance with international law;
- Most Favoured Nation commitments: non-discriminatory treatment of Canadian investors in a country relative to foreign investors from other countries;
- national treatment: non-discriminatory treatment of Canadian investors in a country relative to domestic investors in the same country;
- rights to transfer funds related to investments freely and without delay, both into and out of a country;
- rules on expropriation and compensation;
- commitments on permitting investors the free choice of senior management for their investments;
- disciplines on performance requirements imposed by a host government on an investor, such as domestic content rules, trade balancing, and technology transfer requirements;
- rights to adopt environmental measures consistent with the principles of the agreement;
- general and specific exceptions to obligations to safeguard particular measures;
- transparency commitments with respect to government policies towards foreign investors;
- enforcement through dispute settlement, including both state to state and state to investor arrangements.

Source: Industry Canada website <<http://strategis.ic.gc.ca>> March 15, 1999.

Competition Policy Concerns

The rationale for including CP within the WTO stems from the view that trade policy and CP are complementary in their objectives. Both aim to improve consumer welfare by making markets "contestable", a code word for market access. (For further explanation of the concept, see Box 10.2. See also the discussion of the broader application of the principle of fair market contestability in Chapter I). Trade policy to date has emphasized the removal of measures taken by governments such as tariffs and non-tariff barriers (NTBs) that restrict trade. Another set of policies, competition (antitrust) policies, has similar aims but addresses actions taken by private decision makers on their own that may restrict market access. Trade policy tends to deal with government actions and market access at the border and CP with private measures taking place within borders.

In the domain of CP, rules may be applied to private actions that affect imports and exports. For example, CP in a number of countries, including Canada, permits the operation of export cartels – agreements between domestic companies to fix prices in foreign markets in a manner not permitted in domestic markets. This clearly has an impact on exports and imports by permitting firms to engage in price discrimination through charging higher prices in foreign than in domestic markets, the reverse problem to that addressed by trade remedies for dumping.

Other examples show the convergence between trade and CP. Two recent cases illustrating the boundary problems have been the merger of Boeing Co. with McDonnell Douglas Corp. and the Kodak–Fuji case. The European Commission threatened to block the aircraft company merger on the grounds that the two companies had exclusive deals to supply certain major airlines, which could harm the makers of the competing European-made Airbus. The U.S. threatened to retaliate if the merger was blocked. Private anticompetitive practices in Japan regarding

market entry were the basis for a 301 petition filed by Kodak leading to a submission to the WTO regarding Kodak's attempt to sell film in the Japanese market. The problem arose because of the actions taken by a vertically integrated Japanese company that limited the ability of Kodak to distribute films in Japan.

Countries vary in the scope and enforcement of their competition laws. About 80 countries were reported to have such laws in 1997 compared with half that number a decade earlier, but the wording and application of each country's legislation differs.² The scope of coverage varies by industry and activity, with most countries exempting agreements among unions or associations of employees. The effectiveness of the policy depends on how fully and effectively it is enforced and this will often be a function of court and regulatory decisions. As well, competition authorities often use discretion in advising firms about the actions they are permitted to take, making it difficult to enforce policy transparency. As in the case of copyright piracy and intellectual property rights policy, the devil is in the details in understanding how the policy works and its likely effectiveness. Even for those countries that have competition laws on their books, there are often significant differences in their actual impact.

The conduct typically covered by competition laws and regulations include:

- price fixing and market sharing cartels or agreements;
- export and import cartels;
- agreements by competitors to rig bids;
- group boycotts or refusal to supply;
- abuse of monopolistic or dominant position;
- exclusive distribution or supply arrangements;
- resale price maintenance;
- price discrimination;
- horizontal, vertical, and conglomerate mergers;
- misleading advertising.

² *The Economist*, October 3, 1998, Survey of World Trade, p. 4.

Box 10.2 Contestable Markets

A market is viewed as being contestable if any effort by an existing seller in the market to raise prices above some "competitive" level results in attracting new entry by firms into the market, such that the price is driven back to a competitive level. A contestable market is one where either entry occurs when prices are raised, or where the incumbent firm(s) which could be a monopolist, behaves like a competitive firm because of concern that by raising the price, entry by competitors will occur. Thus a monopolist may operate in a manner similar to a firm in a competitive market if the market is contestable. However, not all markets are contestable. Conditions may prevail, either associated with the economics of the industry such as economies of scale, or due to government policy such as licensing requirements, or due to private actions taken by firms such as exclusive dealing arrangements, that prevent entry or the realistic threat of entry. Measures making markets more contestable often involve improving market access leading to the benefits associated with trade liberalization. CP assists in promoting contestable markets by addressing private actions that otherwise limit firms from competing in a market.

An example of alleged monopolistic abuse is illustrated by the U.S. antitrust case against Microsoft where the firm is accused of abusing its dominant position by making it difficult for competitors to sell software that is in competition with similar software owned by Microsoft. This case is of relevance to software suppliers in Canada and elsewhere in the world if Microsoft's private actions restrict the use of their products. Canada and the United States, through an informal cooperative process, successfully prosecuted a cartel affecting the price of thermal fax paper in both markets and involving firms situated in third countries. Fines in Canada totaled \$3.5 million. A conspiracy between a Canadian and American firm supplying ductile iron pipe used to deliver drinking water led to fines in Canada of \$2.5 million.

Particular attention has been given to two areas, dumping and export cartels. A detailed procedure is incorporated into trade agreements to handle dumping cases which is in part related to safeguards as a way of protecting domestic industry from low priced imports. In competition legislation, the practices of price discrimination and predatory pricing is the domestic equivalent to dumping, whereby sellers can be protected from unfair pricing practices of their competitors. Most countries have separate regimes for dumping

and price discrimination.

Export cartels present an unusual if not unexpected problem. As noted, some countries permit the formation and operation of export cartels, that is, agreements affecting export but not domestic sales. These countries consider it acceptable to do to others what they would not be prepared to have happen in their own domestic market. Most observers see no redeeming value to these arrangements and argue that they should be prohibited. In some instances, export cartels have led to governments permitting the formation of import cartels, that is, associations between buyers to offset the activities of export cartels. Other cartel related measures are voluntary export agreements (VERs) whereby exporters are pressured by an importing country to agree to limit their export sales. This is often done in order to prevent the introduction of some other less desirable trade retaliation.

In sum, there are a wide range of private actions that may restrict market access or lead to unfair methods of competition. As government inspired trade barriers come down, these private actions become more visible leading to proposals for their inclusion in a trade agreement. A recent WTO report summarizes the restrictive practices that Member countries think should be addressed. (see Box 10.3)

Box 10.3 Examples of Anticompetitive Practices

With regard to practices affecting market access for imports, the specific examples cited by member countries in the discussion included actual cases of domestic import cartels. International cartels that allocated markets among participating firms, the unreasonable obstruction of parallel imports, control over importation facilities, exclusionary abuses of a dominant position, and vertical market restraints that foreclosed markets to competitors, certain private standard-setting activities and other anti-competitive practices involving industry associations examples of practices including vertical integration by local manufacturers into distribution; contractual arrangements that mimicked the effects of vertical integration, such as exclusive dealing and sole distribution rights; cartels involving local producers; anticompetitive arrangements involving both local and offshore producers; possible instances of predatory pricing; and private standard setting activities in addition to import cartels, vertical market restraints, and more general exclusionary abuses of a dominant position.

Source: WTO, Report of the Working Group on the Interaction Between Trade and Competition Policy to the General Council, WT/WGTCP/2, December 8, 1998, para. 84.

Witness Views on Investment

The ghost of the Multilateral Agreement on Investment (MAI) haunted the testimony of investment and to some extent CP policy issues although there was more support for including the latter in a new round of negotiations. Throughout the Committee's hearings the MAI was referred to almost as frequently as the WTO, and usually in an unflattering manner.³

The witnesses were concerned about two aspects of the MAI: the process of public consultation, and the substantive issues that might be included in an investment agreement within the WTO. We have already dealt in the first Recommendation with the need for ongoing consultations and reaffirm that proposal here. A similar recommendation was made in an earlier report by this Committee in December 1997, where Committee members also supported with recommendations many of the issues that witnesses now urge the Government to adopt in all future negotiating forums.

On the substantive issues, there were conflicting views. Some, such as the Council of Canadians,

opposed the inclusion of investment in a new round of negotiations, as did the Canadian Labour Congress by noting "the potential of the MAI to undermine the ability of governments to maintain public services such as health care on a non-commercial basis, and the potential of the MAI to subvert and undermine legitimate government regulation in the public interest in areas such as the environment and health and safety." (*Submission*, Canadian Labour Congress, April 27, 1999) David Runnalls, Interim President of the International Institute for Sustainable Development, argued that his opposition was primarily because "the requirements of an investment agreement are structurally different from those for the liberalization for trade in goods." (*Evidence*, Meeting No. 95, March 16, 1999) Another factor noted was the opposition of developing countries to an agreement that would limit their ability to promote and shape their national economic development.

The opponents to the inclusion of an MAI-type agreement in the WTO centered their arguments around a series of themes that were repeated in numerous briefs. They felt that an investment

³ The Canadian Artists Representation submitted as their brief to the Committee (Saskatoon, April 30, 1999) two previous submissions prepared in connection with the MAI in 1997 and 1998.

agreement would be an infringement on state sovereignty, making it difficult to implement a wide range of policies concerning culture, health care, social policies, and labour and environmental standards. Particular concern was expressed about the investor–state mechanism which allows foreign investors to claim damages from the state as a result of policies that adversely affect the value of their assets in member countries as provided for in Chapter 11 of NAFTA. Michael Flavell, a lawyer in private practice, noted that many lawyers argue that “there is a problem with section 11, which is that the concept of expropriation is too widely

defined.” (*Evidence*, Meeting No.99, March 1999) This needs to be fixed in the NAFTA and its wording in any multilateral agreement would require careful attention. On the same topic, Professor Bernier argued that “if the investment issue is to be negotiated under the WTO, that door that was opened absolutely must be closed. Investors must be able to complain about specific and limited things involving a genuine expropriation or similar measures, but certainly not, as was the case, for situations equivalent to expropriation, which opens the door very wide for anything.” (*Evidence*, Meeting No. 104, March 22, 1999, Québec City)

Recommendation 32

In view of the concerns arising from the interpretation of “expropriation” in the investor–state provisions of the NAFTA (Chapter 11), the Government should ensure the incorporation of a narrowly–defined concept of expropriation in any future negotiations on investment in the WTO.

More than any other issue, the Ethyl/MMT case was used as evidence to argue that the proposals in the MAI were a charter of rights for multinational enterprises that would adversely impact citizens and the state. A related line of argument proposed the inclusion in an agreement, if a comprehensive one was negotiated, a set of mandatory standards for labour and mandatory guidelines for the behaviour of multinational enterprises as a way of offsetting the perceived advantages of private investors. The voluntary OECD guidelines for multinational enterprises were deemed by most witnesses to be inadequate measures.

Throughout the hearings in Western Canada, the Committee received numerous submissions setting out a similar set of arguments, for example from the West Coast Environmental Law Association (*Evidence*, Meeting No. 121, April 27, 1999, Vancouver) and the Special Committee on the MAI of the Government of British Columbia (*Evidence*, Meeting No. 120, April 26, 1999, Vancouver) as well as from

spokespersons from religious, student and women’s organizations, and from individuals. Members of the Council of Canadians appeared in a number of locations. Their presentation is assisted by a draft position paper on trade and investment liberalization posted on the Council’s Website at www.canadians.org. The Council and other interest groups have made effective use of the Internet to mobilize support for their points of view.

The Committee’s attention was drawn by a number of witnesses to the Lalumière report to the French government, which is widely credited with being responsible for France’s decision to withdraw from the negotiations, and for the subsequent demise of the MAI. A reading of the complete report confirms its criticisms of the MAI but reveals its support for some type of investment agreement, “Under the present disorder in globalisation, every country has an interest in the establishment of stable and fair rules... an agreement is in the interest of France and (its) firms.”⁴ The report goes on to discuss the

⁴ Catherine Lalumière and Jean–Pierre Landau, *Rapport sur l’Accord multilatéral sur l’investissement (AMI)*, Paris, September 1998, p. 4.

elements of a new agreement and the reasons why it would be preferable for these to take place within the WTO rather than the OECD.

An alternative view supportive of the inclusion of a broader instrument on investment within the WTO was put forward by the Alliance of Manufacturers & Exporters Canada (*Evidence*, Meeting No. 95, March 4, 1999) and by Professor Bernier of Laval University. (*Evidence*, Meeting No. 104, March 22, 1999, Quebec City) The Mining Association of Canada stated that "An agreement on investment should provide a general framework for national policies and international principles related to the treatment of international investment." (*Submission*, April 27, 1999)

According to Professor Globerman of Simon Fraser University, of the unfinished items on Canada's trade agenda, none "is more important than continuing and completing the liberalization of the global environment for foreign direct investment." (*Submission*, Professor Stephen Globerman) Professor Winham of Dalhousie University was also supportive but noted that "there will be a problem in how to negotiate investment in the WTO. I would expect developing countries will prefer to start on a minimal basis, moving from the terms of the agreement reached in the Uruguay Round." (*Evidence*, Meeting No. 107, March 24, 1999, Halifax)

This cautionary approach was repeated in the position taken by Pierre Sauvé, a Canadian official at the OECD on leave at Harvard University. Testifying in Ottawa on May 12, 1999, he argued that there were important lessons to be learned from the MAI experience about what was achievable in an investment negotiation given the current political and economic context.⁵ The remarkable growth in FDI, especially over the past decade and the existing inclusion within the

present agreement of investment provisions, especially in the TRIMs and in the "commercial presence" wording of the GATS, led Dr. Sauvé to suggest that it would be wise "to scale back ambitions on trade and investment in Seattle" and "to focus on more short-term expectations."

Among the areas for discussion within the GATS, he suggested: broadening the rules for the definition of commercial presence; strengthening the investment protection features of the GATS; improving the clarity of the GATS' current method of scheduling commitments; and promoting greater transparency on investment incentives. In effect, the existence of a WTO Working Group on the Relationship between Trade and Investment implies an on-going negotiating group so that one way to proceed would be to "renew and refine the mandate of this Working Group." (*Evidence*, Meeting No. 135, May 12, 1999)

The testimony of Professor Smythe of Concordia University College of Alberta pointed to similar factors: that FDI flows at record levels; most of Canada's outward investment is covered by provisions of the NAFTA and the bilateral investment treaties; and a mandated review of the TRIMs is already part of the Uruguay package due by the end of 1999. While these initiatives would continue, she recommended "that Canada not support the inclusion of broad investment rules in the new round of negotiations at the WTO." (*Evidence*, Meeting No. 124, April 28, 1999, Edmonton)

The large flows of FDI in recent years suggest that an agreement may not be needed to maintain such investment. In an earlier hearing on the MAI, witnesses in support of an investment agreement told the Committee that failure to complete such an agreement would not be especially harmful to Canada, since most of its investment abroad was in developed countries where there is little fear of

5 A detailed exposition of the rationale for the views expressed is found in Pierre Sauvé and Christopher Wilkie, "Exploring Approaches to Investment Liberalization in the GATS," Paper prepared for "Services 2000 – New Directions in Services Trade Liberalization," conference co-sponsored by the American Enterprise Institute, the Brookings Institution, the Center for Business and Government at Harvard University and the Coalition of Service Industries Education and Research Foundation, Washington D.C., June 1–2, 1999.

expropriation, and in developing countries where investors are or can be protected by bilateral investment treaties. The question then is whether

the net benefits to capital exporting and importing countries would be improved if an agreement existed.

Recommendation 33

In the event that the mandate of the Working Group on Trade and Investment within the WTO be renewed, the Group's workplan should focus on refining and extending the commitments already made with respect to investment.

Witness Views on Competition Policy

There was a broader consensus in favour of including CP within an expanded WTO but caution was expressed. The Alliance of Manufacturers & Exporters Canada argued that "competition policy and law is a highly complex area, as we all know. It is the alliance's opinion that the focus should shift away from coming up with and trying to agree on substance of competition rules and remedies and look more toward the development of a clear set of principles and guidelines for the open and fair administration and enforcement of these rules." (*Evidence*, Meeting No. 112, April 13, 1999)

Michael Flavell drew attention to the differences between countries: some have competition laws, some do not; some are enforced, others not; some use a judicial and others a regulatory approach; and differences occur in the coverage of restrictive practices and the exemptions granted. He advised that negotiators should work towards harmonization of existing laws around practices that many countries with an active CP already address, especially the prohibition of price fixing or horizontal combinations and conspiracies. (*Evidence*, Meeting No. 99, March 16, 1999) Measures related to the abuse of dominant position are other candidates for possible harmonization, an issue on which there is already some agreement in the competition regime of the European Union.

The Commissioner of the Competition Bureau at Industry Canada supported negotiations leading to a set of multilateral rules for CP within the WTO for reasons previously cited and associated with the linkage between trade and investment, and between trade policy and CP.⁶ In addition he noted that the introduction of new technologies means that "commerce increasingly ignores borders, and so does anti-competitive conduct." (*Evidence*, Meeting No. 113, April 15, 1999) This requires cooperation between competition authorities in different countries, a practice that is already under way. The Commissioner advocated an agreement similar to that negotiated for TRIPS but in this case called TRAMS, standing for trade-related anti-competitive measures.⁷ Such an agreement would contain "a provision against cartels and criminal conspiracy; a provision for merger review; a provision for abuse of dominant position; an advocacy role for the competition authority to make sure competition is considered in the various policy forums; a protection of confidential information and finally, access to effective deterrents, be they monetary or criminal." (*Evidence*, Meeting No. 113, April 15, 1999)

TRAMS would build on existing measures of formal and informal cooperation between competition authorities in different countries. To begin with, it would state general principles and priority areas for negotiation and agreement. Over time the agreement would develop more obligations and procedures necessary to

⁶ The 1996 edition of UNCTAD's *World Investment Report* examines the trade-investment relationship in detail.

⁷ The TRAMS proposal has been put forward by Edward Graham and David Richardson in *Competition Policies for the Global Economy*, Washington, Institute for International Economics, November 1997, pp. 41–58.

implement such an arrangement. This proposal is similar to the way in which the GATT developed and the GATS is expected to evolve. A TRAMS process would be a way of getting private market access restrictions on the radar screen for trade negotiators.

A month after the appearance of the Commissioner, the Competition Bureau posted on the Industry Canada Website a discussion paper calling for public comment on options for the internationalization of CP. This document provides an additional overview of the issues, with references to the OECD, WTO, EU, and academic sources.

Lawyers for the firm of Stikeman, Elliott provided an overview of trade and competition policy issues. They noted both "the widening divergence between the expanding geographical scope of economic markets and the limited jurisdictional scope of regulatory activity and competition enforcement," and the proliferation of national laws and guidelines which may be "misused or used strategically to protect domestic interests against foreign importers." (*Submission*, April 27, 1999) Citing an urgent need for action, this brief indicated that the present was an opportune time to build on the cooperative arrangements that already exist between countries with competition laws. "An unparalleled opportunity exists for Canada to be a real force for positive change on this issue. Canada should help formulate a consensus on the promotion of international competition policy during the next round of WTO negotiations."

A similar recommendation has been made by the Deputy Secretary-General of the OECD.⁸ Proposed as a third approach between a mandatory set of rules similar to those contained in a Draft International Antitrust Code put forward by the Munich Group (a group of German competition scholars)⁹ and a set of minimum

standards, the OECD proposal "seeks to have countries agree on a framework of rules, rather than a set of specific provisions." Countries would agree on a set of core principles which would refer to basic concepts like "relevant market, barriers to entry, market power and abuse of dominance," and would include due process and positive comity principles, but would not involve a formal dispute settlement process.

In the CP trade policy nexus, attention has been given to trade remedies associated with dumping which as noted, is the cross-border equivalent of predatory pricing or price discrimination undertaken in domestic markets. A detailed procedure is incorporated into trade agreements to handle dumping cases which is, in part, related to safeguards as a way of protecting domestic industry from low priced imports. In competition legislation, Canada and other countries have measures to address the domestic equivalent to dumping whereby sellers can be protected from unfair pricing practices of their competitors. Can the two policies be merged?

There was general support for the view that the two approaches should not be combined, even though this had happened in the case of the European Union where the creation of a single market eradicates the distinction for those countries that are part of the single market, and in the case of the Closer Economic Relations Agreement between Australia and New Zealand. In part this may reflect bureaucratic competition where neither group of administrators wants to relinquish certain policy instruments. But in part it stems from the political reality that the United States and other countries that have introduced antidumping regimes do not want to give up these powers. Michael Flavell argued that in Canada's case predatory pricing in domestic markets only occurs if the predator has market power and intends to hurt a competitor. No such intent needs to be shown in the case of dumping. Thus, if dumping became part of domestic CP, it would

⁸ See "Competition Policy: What Chance for International Rules?" speech delivered by Joanna R. Shelton at the Wilton Park Conference 545: The Global Trade Agenda, November 25, 1998.

⁹ Reprinted in 65 Antitrust and Trade Reg. Rep. (BNA) no. 1628 (Special Supp.) Aug. 19, 1993.

weaken Canada's ability to pursue antidumping cases since intent would be difficult to prove especially when pricing is the result of actions taken outside of Canada. (*Evidence*, Meeting No. 99, March 16, 1999) The Commissioner for CP in Canada also supported the maintenance of two separate regimes.

Another substantive issue is the exemption for export cartels in the legislation of Canada and other countries. The ability to fix prices in foreign markets in a manner prohibited in domestic markets has no economic justification. The Commissioner noted "I don't think you can justify export cartels, either in terms of economics or in terms of our trade philosophy. It's an area that needs to be addressed." (*Evidence*, Meeting No. 113, April 15, 1999)

Other testimony pointed to the existence of CP provisions within the Reference Paper on telecommunications services and in relation to the operation of state-owned enterprises. Where state owned monopolies have been privatized, they have often been converted to private monopolies in situations where there are no competition laws, permitting the maintenance of trade distortions through private actions. General support for extending trade agreements to embrace CP came from the Canadian Chamber of Commerce, the Canadian Conference on Policy Alternatives and the Saskatchewan Synod of Evangelical Lutheran

Churches. (*Evidence*, Meeting Nos. 120 and 123, April 26 and 28, 1999)

In commenting on the need for progress in this area, both the OECD and the WTO have noted the need for more examples of actual instances of restrictive business practices frustrating trade liberalization. The WTO, which has made a sustained study of the issue, concluded that it would be desirable "to obtain more systematic empirical information of the frequency and impact of the various types of anticompetitive practices of enterprises (para.95). The submission by Stikeman, Elliott refers to the need for more "systematic information on the frequency and impact of the various type of anti-competitive practices." For those countries like Canada and the United States that have had CP for over a century, it seems surprising that more examples are not readily available.

Testimony presented to the Committee suggests that there are already detailed discussions under way on the need to broaden the scope of CP beyond national borders, given the rash of mergers with international consequences and some evidence of a range of cross-border restrictive business practices. Competition authorities already appear engaged in discussions both within and outside trade regimes like the WTO. It is not clear to the Committee how close the cooperation is between trade and competition officials.

Recommendation 34

In view of the expansion of international trade and investment, including cross-border mergers involving large companies and the application of competition policy to national jurisdiction, the Government should:

- work with like-minded countries to collect more information of actual examples of anti-competitive practices affecting trade;
- encourage the introduction of competition policy regimes by countries that presently have none and the enforcement of policies by those that do have them; and
- work towards a common set of principles for inclusion in an agreement on competition policy with a view to their being expanded and refined over time.



Part Three

The WTO and the Global Future: Advancing the “Social Dimension”

- Chapter 11: The WTO and the Promotion of Societal Values Globally
- Chapter 12: Linking Trade, Environment and Health, and Sustainable Development
- Chapter 13: Linking Trade, Labour Standards and Human Rights

THE WTO AND THE PROMOTION OF SOCIETAL VALUES GLOBALLY

"What Canadians are Saying"

No one in their right senses would argue that global trade is necessarily bad....In fact fair global trade could lift all of us out of poverty and oppression, spread the wealth around more justly, and allow governments to carry out their role of working for the welfare of their people...The problem is that world organizations are geared to foster the greed of large corporations to the detriment of ordinary people. Large corporations do not have a conscience since no one person owns the responsibility. And when no one person is responsible, then no one is responsible. It is up to governments then to provide controls and protection for their people.

Sister Anne Bezaire, Ecumenical Coalition for Economic Justice of Wallaceberg
Friday, April 30, 1999 Windsor

Today, most nations have generally high standards of labour and environmental regulations. The phrase "race to the bottom," has little substantive meaning. Countries will not compete by scaling back their labour and environmental standards. In fact, the very opposite is happening. It should be clear that WTO signatories will not compromise their labour, health, safety or environmental standards to attract foreign investment.

Gordon Peeling, Mining Association of Canada
Tuesday, April 27, 1999 Toronto

Since corporations are primarily concerned with the bottom line it seems more than a little naive to expect them to police themselves. Standards of behaviour need to be imposed through appropriate agreement with effective enforcement.

Marion Odell
Tuesday, April 27, 1999 Toronto

I think that most Canadians would not want free trade with countries which persecute trade unionists, ethnic minorities, or religious dissenters, or have plainly unstable or dictatorial governments.

John Murray, Alternatives North
Wednesday, April 28, 1999 Edmonton

We believe that all government policies including international trade and investment must give priority to a set of human values, values that such agreements must honour and not erode and trample :...human dignity, mutual responsibility, social equity, gender equity, economic equity, fiscal fairness and ecological sustainability. Canada, and especially developing countries, must have the freedom to implement creative solutions to address their deprivation, inequality and poverty, to maintain labor standards and to respond to the aspirations of aboriginal people.

Merv Harrison, Multi-Faith Social Justice Circle of Saskatoon
Friday, April 30, 1999 Saskatoon

If, in order to be more successful in international trade, we must become South Korean or American and adopt the economic characteristics of those countries, then I believe there would be a problem and we would have to undertake the intellectual exercise of opposing the expansion of international trade and find alternatives. In other words, international trade, yes, but not at any price, especially not at the price of our international reputation, the role that we must play on the international scene and our Canadian uniqueness.

Thomas Lavier

Thursday, March 25, 1999 Montreal

What does the church know about economics? We may not know very much about the very many economic theories, but we do know more than enough about the economic reality of the world today, the incredible suffering placed upon so many in the world. We lay the blame upon the willingness of some governments to allow multinationals to write their own rules at the level of world trade.

Reverend Tony Haynes, Roman Catholic Diocese of Saskatoon

Friday, April 30, 1999 Saskatoon

...the principal objection I have to the framework of all these [trade] agreements is the overriding assumption that trade is more important than any other human activity or the environmental health of our planet. This assumption is so much taken for granted by free traders that they have completely forgotten that the assumption even has to be justified. But how else can you explain recent WTO actions that overturned domestic laws designed to protect clean air, endangered species, food safety, cultural diversity, public health, and human rights?

Dr. Shane Koscielniak

Monday, April 26, 1999 Vancouver

A key overriding concern for any negotiations is the issue of stewardship: the ability of human beings to be responsible in their decision making, specifically their economic decision making, as well as accountable to themselves, their wider community, and ultimately to God....Formal mechanisms need to be in place to override international trade decisions where they work against the legitimate stewardship role of sovereign states. If they are not overridden, the World Trade Organization itself will need to incorporate these wider goals within these international agreements themselves.

Roger Petry, Saskatchewan Synod Evangelical Lutheran Church in Canada

Friday, April 30, 1999 Saskatoon

I'd like to finish by quoting...Herman Daly, who worked at one time for the World Bank. ...He said the 11th commandment should be "Thou shalt not allow unlimited inequality in the distribution of private property". I would say that in any World Trade Organization debate or any trade negotiations, this question of inequality should be paramount. We are not going to get a healthy, sane society with the kind of inequality that others have referred to, which we know is doing untold damage.

Derwyn Davies

Monday, April 26, 1999 Winnipeg

It's inappropriate to classify persons as simply consumers or investors. This detracts from their capacity, as citizens, to engage in democratic relationships and care for their neighbours and communities.

William R. Adamson
Friday, April 30, 1999 Saskatoon

...there need to be provisions in future agreements that allow countries, or more local political structures, to prevent some things from being commodified...Countries and communities need to have the option of non-commodification. Certainly this is an issue which concerns Canada as we continue to struggle to keep medical care and education in the public domain. In other societies similar concerns encompass land, traditional or indigenous knowledge, and intellectual property.

Professor Jim Handy, University of Saskatchewan
Friday, April 30, 1999 Saskatoon

The idea that a common set of rules for trade and investment conflicts with social well being should present an oxymoron. Sadly, it does not. Continued exclusion of civil society from participation in decisions which so profoundly affect it risks not only bad trade agreements, it risks escalating civil unrest worldwide.

Warren H. Peterson, Saskatchewan Health Coalition
Friday, April 30, 1999 Saskatoon

I hope that as you negotiate these trade agreements, whether it's at the WTO or somewhere else, you think of these future generations, you think of these children. That's what brought me here today—not that I'm very comfortable doing this—the idea of what kind of future we are making for my grandchildren and yours.

Cynthia Cooke
Monday, April 26, 1999 Winnipeg

Although the world as a whole may be getting more wealthy and machines are now doing what people in so-called developed countries once did for themselves, we have not found ways to alleviate the suffering of the poor. For example, an unfortunate "side effect" of economic growth appears to be environmental destruction, just as an unfortunate "side effect" of the bombing of Yugoslavia is the so-called collateral effects of killing civilians. For how long can the world tolerate these side effects?

Barry M. Hammond
Monday, April 26, 1999 Winnipeg

The WTO and the Promotion of Societal Values Globally

It has always been this government's view that trade allows us to export not only our goods, but also our values; that the global economy must be a humane place where good government, democracy, and the rule of law ensure that the benefits of trade liberalization are shared among all levels of society. We have never believed that it is necessary to sell our souls in order to sell our goods. And just as we have a responsibility to protect individual rights and maximize opportunity within our own society, we also believe that similar obligations flow with respect to the global community we are creating through freer trade.

– Hon. Sergio Marchi, Minister of International Trade¹

... one paradoxical result of the current search for global solutions to environmental, social, and other issues is growing pressure in some quarters for unilateral trade measures. But whose environmental standards, cultural traditions, political systems represent a universal norm? Which one of these values and standards should be imposed on other countries? And do we really want the WTO to play the judge, jury and police of our environmental, social and ethical values? Not only are we asking the trading system to play a role for which it was never intended. Worse, this is the surest way of poisoning the spirit of international consensus and cooperation that we so desperately need to begin addressing the broader challenges of the next century.

– Former WTO Director General Renato Ruggiero²

Searching for Global Public Values in Trade Terms

In his last public address as WTO Director General, Mr. Ruggiero suggested the beginning of a way out of the impasse alluded to in the remarks cited above. Observing that "our globalizing world must be more than a slogan or a vague expression of shared sentiment," he declared "we need to identify new global values which can be shared by our global community in these changing times."³ But there is much he left unstated. What exactly are these values? How can they be integrated into the rules and practices of the international trade and investment regime? And what specifically is the role that the WTO can and

should play in this regard? The Committee explores such questions in this Chapter.

One will search in vain among the numerous WTO agreements for any that address what the ILO, whose headquarters are located not far away in Geneva, refers in its official documents as the "social dimensions" of trade. In part, this arises out of the historical legacy of the failed ITO and Havana Charter, which left only the much more limited instrument of the GATT as a vehicle for the facilitation of open trade based on its cornerstone principle of "non-discrimination." The GATT regime was not "value-free," and its general exceptions clause, Article XX, notably permitted certain public-purpose grounds on which governments (the "contracting parties")

¹ Statement to the Committee, "Canada and the World Trade Organization: Opening Opportunities to the World", February 9, 1999, p. 8.

² "The Coming Challenge: Global Sustainable Development for the 21st Century", Address to the WTO Symposium on "Strengthening Complementarities: Trade, Environment and Sustainable Development," Geneva, March 17, 1998

³ Ruggiero, "Beyond the Multilateral Trading System", April 12, 1999.

could legitimately discriminate. However, the onus was to ensure that any such measures would be the “least trade-restrictive.” Submissions to the Committee from labour and environmental groups in particular argued that the effect of this and of subsequent rules governing product standards, as interpreted by closed GATT/WTO disputes panel processes, has been to narrow rather than preserve the scope for public interest regulation with respect to the environment and public health and safety.

The primary value asserted by the GATT regime was clearly that of liberalized trade on a non-discriminatory basis. Belonging to the GATT imposed almost no other positive obligations on countries based on international values. Moreover, because the GATT was never integrated into the UN system, its norms evolved on a largely separate track over its first half century. Some might argue that this was a fortunate thing, since the narrower GATT rules seem to have been more effective than many UN initiatives in meeting their objectives. While the UN was expansively declaratory, GATT quietly worked on trade practice as its focal ‘raison d’être’. The point is that the WTO still rests on the GATT framework. This goes far in explaining why, as one witness submission put it, “the WTO reflects a corporate institutional bias that trade is merely an economic issue. Its structure insulates this bias from other areas of public concern, such as cultural, social, and environmental interests.”⁴

The problem, of course, is that it is no longer realistic to maintain these separate compartments if, as Minister Marchi affirmed in his testimony, international trade has become a local issue with effects reaching into many domains of daily life. As the brief from the National Council of Women of Canada put it: “while the WTO was not designed to consider social and environmental issues, its rulings can have profound social and environmental consequences.” (*Submission*, April

1999, p. 5) A witness in Saskatoon quoted from an editorial on the WTO in a British newspaper: “undoubtedly free trade can promote development and wealth, but only if social, environmental, and health issues are included in the policing procedures. If the rules are written by the strong and remain crudely economic, the procedure will always hurt the weak.”⁵ The submission from the Canadian Council for International Cooperation summed up the belief that “an international economic system that does not purposely and directly contribute to sustainable human development is critically flawed. It is not enough to state the goals – we must *build in* the elements that can ensure that the global economy will *increase* the capacity of local and national governments instead of reducing it, *enhance* environmental protection instead of attacking it, and *raise* labour and social standards instead of lowering them.” (*Submission*, “Bringing the WTO Back to International Humanitarian Values,” March, 1999, p. 3)

Indeed, almost all witnesses acknowledged that somehow the promotion of trade and other societal values must be linked in the making of domestic and international public policies. Among the values most often mentioned were: environmental protection and resource sustainability; public health and safety; food security; social justice; gender equity; respect for *all* human rights; and democratic participation. While these are not exclusively “Canadian” values — most draw inspiration from various international instruments which most WTO Members have signed and which proclaim obligations of a normatively ‘universal’ nature — a clear message to the Committee was that many Canadians regard such values as fundamentally important to the determination of Canada’s future international economic policies. The implication is that trade negotiations must be about more than maximizing particular interests, or Canadian self-interests narrowly conceived, but must be

⁴ *Submission*, Citizens’ Council on Corporate Issues, April 26, 1999, Vancouver.

⁵ *The Guardian Weekly*, April 18, 1999, p. 12.

viewed and evaluated holistically through a process that is publicly transparent and accountable. Do the results of what is negotiated ultimately pass the test of adding to the common good based on global public values? For many witnesses such questions were uppermost. Tony Hayden, Director of Social Outreach for the Roman Catholic Diocese of Saskatoon put this challenge to the Committee:

We are all experts in the discussion of the kind of economic future we care to construct for the next millennium. In a very real sense, the question of international trade and investment treaties is a debate concerning values, particularly the current idolatry of free market values of competition and unlimited economic growth, accompanied by ecological irresponsibility and the growing exclusion of the impoverished. Is it time instead to focus on those basic human, community and even spiritual values that our overdeveloped societies have unfortunately discouraged?

(Submission, Tony Hayden, April 30, 1999)

Yet how can the trade system as currently constructed cope with such questions from the uncomfortable pew? Not surprisingly, the established trade policy processes are not well equipped to do this. Relatively few business and industry witnesses addressed the social impacts of trading relationships from a values perspective. But those that did generally acknowledged that there are linkages. However, they were nervous about using instruments designed to reduce barriers to trade amongst nations in order to correct social ills and promote social goals. Would that not frustrate the former purpose, while making the latter an impossible burden? As Joel Neuheimer, Manager of Market Access for the Canadian Pulp and Paper Association, explained to the Committee: "the point we're trying to make is the WTO can't be the world trade, the world environment, the world labour, and the world fill-in-the-blank organization. Its concentration, focus, and mission is trade liberalization, and we

think it works very well. We really don't want to see its capacity and ability restricted at all, through having to solve some of the other social and environmental problems that have been brought to bear on it." (*Evidence*, Meeting No. 117, April 22, 1999)

Defining the Social and Ethical Dimensions of a Global Trade Regime

Concerns about sovereignty, the integrity of social policies, protecting the environment, maintaining national identity, and a better sharing of the benefits of trade resonate as much in Canada as elsewhere. Canada will continue to address these concerns and uphold the integrity of its social policies by ensuring that social impacts are considered fully in the formulation of trade policy initiatives. Canada remains committed to close examination with its private and public sectors and with our trading partners in the WTO to ensure that trade and investment liberalization does not undermine basic values, standards, culture, or a government's right to regulate for legitimate public interests within the broad context of the primacy of the rule of law in international trade.

Government of Canada Report to the Trade Policy Review Body of the WTO, Geneva, November 18, 1998, p.10

What would a workable global trade regime look like that distributed the benefits from freer economic exchange among societies while at the same time being responsive to critical non-commercial values shared among the citizens of these societies? The problem, simply put, is two-fold: (1) can the trade rules be constructed in such a way as to avoid, or at least minimize, any *negative* impacts on human communities and the natural world (which are in themselves a source of tremendous wealth in terms of social and ecological capital for future generations); and (2) can the trade rules be constructed in such a way as to promote, or at least not obstruct, *positive* public policies as well as private or mixed

NGO—government initiatives that use trade measures to achieve socially valued purposes?⁶

The trade rules, as they have evolved from the GATT are increasingly complex, and in the more litigious atmosphere of the WTO, some of the answers must necessarily be complex as well. We will deal in detail with environmental and human health concerns in Chapter 12 and with labour and human rights concerns in Chapter 13. At this point, what we want to signal is that the issue may turn in large measure on the *primacy* of ends over means in international society, assuming that global free trade is not an end in itself, or an article of faith, but a verifiable *means* for improving the general public good.

The point is not just a philosophical one; it has empirical and legal consequences. As stated in the submission from the International Centre for Human Rights and Democratic Development: “it is obvious that we can produce more, consume more, trade more, invest more, and have more money whizzing around the globe than ever before. But if that is not accompanied by reduced hunger, greater dignity for workers, and a fuller enjoyment of human rights by a greater number of people then we have mistaken the means for the end.” (*Submission*, March 24, 1999) The ICHRDD went on from there to argue forcefully that WTO agreements ought, overall, to recognize the primacy of international human rights law, and throughout, to include sensitivity to potential human rights impacts. Bruce Porter, a member of the NGO Committee on Human Rights in Trade and Investment, suggested to the Committee

building—in “some sort of ‘human rights clause’ in trade and investment treaties that would shield from challenge any program or measure which is a component of a government’s protection or realization of human rights ratified in international law and refer these types of human rights questions to appropriate domestic or international bodies with competency in human rights.”⁷

The Committee will return to these issues in Chapter 13, but a few cases will help to illustrate the point. While some witnesses saw strengthened multilateral rules to protect intellectual property and investor rights as being consistent with free trade goals, many others saw these “rights” — which, in contrast to human rights generally, are increasingly being entrenched in international trade and investment treaties — as potentially in conflict with more basic human rights.⁸ For example, health, consumer, student, and other social advocacy groups raised issues with respect to: the right of entry, establishment, and “national treatment” for private health and educational services corporations; the extension of patent rights for pharmaceutical drug companies; trademark rights in relation to cigarette packaging; the patenting by large transnational enterprises of genetically modified organisms and other life forms. Whose rights need to be protected in the public interest? What is consistent with international human rights norms?

At the level of the WTO, the challenge is to determine how to correct the existing anomalies and achieve actual coherence between trade liberalization means and the observance of

⁶ An example of the latter is the Ethical Trading Initiative in Britain. A recent paper by its former head Simon Zadek and Harriet Lamb of the New Economics Foundation explores “the emerging issues associated with the explosion of number and scale of ‘private voluntary’ initiatives that involve the setting of social and environmental standards that cover internationally traded goods. These initiatives have to date been seen as ‘passing under the radar’ of the trade rules overseen by the WTO. However, with their growth in significance and profile, and the increased incidence of government involvement in their design and implementation, there is rising concern that their relationship to the WTO will need to be clarified, particularly in the context of any new round of trade negotiations.” (*Business Ethics: Civil Processes, Voluntary Initiatives and WTO Rules*, unpublished paper, London, March 1999, p. 3)

⁷ *Submission*, Bruce Porter, April 28, 1999.

⁸ In regard to intellectual property, the burden of recent human rights scholarship is that “the maintenance and improvement of human physical well-being must be considered when allocating IP rights.” (Cf. Robert L. Ostergard Jr., “Intellectual Property: A Universal Human Right?” *Human Rights Quarterly*, February 1999, pp. 156–78.)

internationally recognized rights standards that are either related to or impacted by trade and investment flows. As Dani Rodrik puts it in a new book on launching global trade talks, "it is difficult to imagine a coherent explanation for why intellectual property rights belong in the WTO but labor and environmental standards do not. Similarly, why should firms be allowed to protect themselves from 'unfair competition' via antidumping and countervailing duties imposed on foreign producers, while labor does not have a similar privilege with respect to competition from countries with inadequate enforcement of labor standards?"⁹

Of course, the reason that intellectual property rights provide such a compelling example is that they made the leap to the WTO in the TRIPS Agreement, even though such rights were already recognized in existing intellectual property treaties and had their own World Intellectual Property Organization. Clearly, writes Michael Hart, it was seen as important that these protections be "now embedded within the framework of the trade regime and with the enforcement powers of that regime. The same approach may be needed on investment, competition policy, and social issues."¹⁰ But is the WTO up to the job? As Hart told the Committee in Vancouver:

There's wide agreement on human rights. There's wide agreement on basic international labour standards. There's wide agreement on environmental protection. What's missing is the capacity to implement these agreements in domestic laws and make them stick. I think that the key is to find that bridge between the

WTO's enforcement mechanism and these other international agreements and that's a big challenge.

(Evidence, Meeting No. 119, April 26, 1999, Vancouver)

Towards a WTO Agreement on the Social Dimension

*"The WTO is attractive to people interested in the social dimension of trade for one reason: it has teeth."*¹¹

The legal powers of the WTO may, or may not, be a good enough reason to focus attention on addressing the social dimensions of trade under its umbrella. The evidence is clear that such dimensions *must* be addressed through international arrangements, given an accelerated deepening of economic integration processes, and a future negotiating agenda for the trading system that increasingly lies in the domains of domestic regulation rather than border measures *per se*. During the debate over the negotiation of the North American Free Trade Agreement (NAFTA), the five-year record of which drew considerable comment from witnesses, there were suggestions from critics that it should have incorporated a European-style "social charter," not just the relatively weaker "side agreements" on environmental and on labour cooperation which were eventually adopted. Of course, the European Union's single market represents a uniquely advanced case of integration. But while the social charter idea proved controversial and perhaps prematurely ambitious, it raised the need for an additional instrument to prevent increased problems from social and environmental

⁹ Rodrik in Schott (1998), p. 38.

¹⁰ Hart, "Canada at the Millennium Round" (1999), p. 10.

¹¹ Hon. Warren Allmand, President of the International Centre for Human Rights and Democratic Development, *Evidence*, Meeting No. 108, March 24, 1999, Montreal.

“dumping,” against which a strong economic as well as social case can be made.¹²

Agreeing to international disciplines on such dumping implies that trading partners have also reached some prior agreement on shared societal values in regard to acceptable standards of behaviour within a fair as well as free market place. Such an agreement may also entail a substantial upward harmonization (or perhaps more realistically, an agreement on mutual recognition) of social standards, preferably accompanied by social transfers to assist all participants in the trading system in meeting these higher standards. Obviously we are a long way from that at the global level. The difficult question for the WTO is the degree to which it should now take a lead in advancing consideration of the social dimension. As a minimum, the WTO could open up its proceedings to more participation from other international organizations with relevant expertise, notably the ILO, UNCTAD, UNDP, UNEP, and WHO. But beyond that, many of the WTO’s social critics are skeptical on account of its present constitution.

On the April 26 Vancouver panel with Michael Hart, for example, Marc Lee of the Canadian Centre for Policy Alternatives submitted that: “the overwhelming focus of bodies like the WTO is on reducing barriers posed by governments. As such, it is an inappropriate forum for discussion of other issues that may have priority over trade.” Another argument which has been made is that: “openness to global competition ... should not force

countries to compromise their own environmental, health, safety, and labor standards ... comprehensive solutions to problems among countries of conflicting national social and environmental standards will be possible only through the construction of new international institutions – not a grafting of new rules onto existing trade agreements and institutions such as the WTO.”¹³

Yet there is no appetite for adding more international organizations, and international standards already exist which WTO Members have pledged to observe in other forums. Moreover, waiting for reformed institutions to emerge leaves hanging present demands for improved international enforcement of these standards. As well, active consideration by WTO Members is required to ensure that its rules help to reinforce, rather than trump, international environmental, social, and human rights obligations. In recent writings, Michael Hart argues that, while current trade bureaucracies may not be the ideal ones to confront these complexities, until governments are prepared to enter into self-executing international agreements enforced by domestic courts, trade agreements may be the most politically effective way of both achieving compliance with multilateral obligations and resolving conflicts over the social dimensions of trade. His Vancouver submission suggests that:

One practical way to proceed would be to negotiate international rules of fair

¹² Social dumping occurs when exports benefit from unfair pricing advantages as a result of their production being located where standards and their enforcement are weakest; in effect, when trade and investment flows exploit poor social conditions and environmental practices, the costs of which are externalized. As U.S. trade economist Peter Morici explains: “Eliminating this practice would raise living standards by eliminating negative externalities, i.e., practices whose social costs are not reflected in the monetary costs borne by firms. Much like the elimination of tariffs and quotas, ending social dumping would encourage a more efficient allocation of resources and patterns of production ...” (“Implications of a Social Charter for the North American Free Trade Agreement,” in *The Social Charter Implications of the NAFTA*, Canada–U.S. Outlook, National Planning Association, Washington, 1997, p. 8; and for a Canadian view in the same volume, Gilbert Winham and Elizabeth De Boer, “Trade Negotiations and Social Charters: The Case of the North American Free Trade Agreement.”) That Mexico, in this case, has much lower wage rates does not in itself constitute social dumping since, commensurate to its level of development, such lower costs can be a legitimate area of comparative advantage. Actionable dumping would only result if prices of goods for export were kept artificially low through a deliberate suppression of labour and other input costs, thereby causing a material injury to competing producers in the importing country.

¹³ Kent Jones, “Who’s Afraid of the WTO?”, *Challenge*, January/February 1998, pp. 105–6.

competition that include basic labour standards, minimum levels of environmental protection, and similar provisions, within the framework and enforcement mechanisms of international trade agreements. The basis for such standards can be found in the core standards elaborated by the ILO, UNEP, and other international organizations. The effect of such a code would not be to reduce competition between high-wage and low-wage economies, but to ensure that an internationally agreed level of obligations governs the behaviour of firms in the global economy. The quid pro quo would be that the establishment of such standards would outlaw their unilateral pursuit.

(Submission, "Canada at the Millennium Round", April, 1999, Vancouver, p. 18–19)

The debate on these issues is only beginning to be framed. According to Hart, there is an opportunity that should not be missed to project Canadian intellectual leadership for the next round of negotiations: "Canada needs to remain ahead of its trading partners in analyzing emerging issues and in developing imaginative yet realistic options for cooperation and rule making at both domestic and international levels." The Committee agrees. In Chapter 1 we proposed a high-level process for reviewing the constitutional direction of the WTO. That should include consideration of how WTO agreements and activities can best contribute to advancing the social dimensions of global economic governance.

Recommendation 35

Canada should put forward options for the integration of trade-linked social dimensions within WTO constitutional principles, agreements, and activity structures. A first priority should be to ensure that the relationship of all existing, and any prospective, WTO rules and practices to the major multilateral obligations in the areas of environmental and health protection, labour rights, and human rights generally is mutually supportive. In the longer term, consideration should also be given to the positive use of WTO mechanisms to promote greater compliance with these obligations.

LINKING TRADE, ENVIRONMENT AND HEALTH, AND SUSTAINABLE DEVELOPMENT

"What Canadians are Saying"

There simply is nothing in the WTO that doesn't have substantial implications for environmental law and policy. It's important that before these commitments are further consolidated or extended that we begin to understand what those implications are, and make a commitment to address them in a way that's consistent with dealing with the very pressing ecological problems before us.

Steven Shrybman,
West Coast Environmental Law Association
Tuesday, April 27, 1999 Vancouver

Some may argue that global trade agreements will result in greater prosperity for people of the world, but we disagree...Already in Ontario we have seen our provincial government reduce environmental regulations and environmental monitoring to meet the cost of global competition. Because of these actions we will never be able to repair some of the environmental damage that has been done. (Testimony)

Ken Bondy, CAW Windsor Regional Environment Council
Friday, April 30, 1999 Windsor

...there should be no link between environmental provisions and trade and investment agreements. Linking the two only provides critics another venue to harass Canadian exporters. Mechanisms already exist to deal with environmental issues. The side agreement on environment under NAFTA entitled the North American Agreement on Environmental Cooperation is an example. These issues should remain separate and not be used as a mechanism to restrict trade.

Gary Leithead, Alberta Forest Products Association
Wednesday, April 28, 1999 Edmonton

If one looks in depth at the public opinion polling data on the aspirations of Canadians in their foreign policy, overwhelmingly, consistently, Canadians everywhere, regardless of language, region, income level, stated their number one foreign policy priority global environmental protection. And that is an imperative that ranks ahead of trade liberalization...We simply can't have a trade system that does not recognize and, in important areas, accord precedence to multilateral environmental agreements.

Professor John Kirton, Department of Political Science,
University of Toronto
Tuesday, April 27, 1999 Toronto

Sir Leon Brittan's proposal that trade agreements should be accompanied by an environmental analysis is a matter of prudent governance.

David Runnalls, International Institute for Sustainable Development
Thursday, March 18, 1999

The argument is put that to incorporate environmental standards into WTO rules is to engage in green protectionism. Indeed that is a legitimate concern and all interventions in this area must respect the needs and conditions of economies at different levels of development....The current WTO interpretation on PPMs seems very much to protect producers, rather than the publics at large. We believe the process and production methods used to produce a good to be a key environmental concern which should, in certain carefully defined circumstances, be valid grounds for restricting imports. Success in addressing and resolving the PPM issues will very much depend on the willingness and ability to address the legitimate fears of many that this will amount to green protectionism.

Simon Rosenblum, World Federalists of Canada
Tuesday, April 27, 1999 Toronto

Governments must include encouragement and facilitation of environmental management systems and environmental management tools in trade negotiations. How should we include these environmental factors? The negotiations should encourage and facilitate the use of environmental management systems such as ISO 14001 which is a voluntary market driven system in place and actively being used by advanced corporations around the world...The market does provide benefits if there are fewer constraints and fewer subsidies. Therefore the principles of no subsidy should apply but allowing pollution is allowing a form of an indirect subsidy. The polluter is not paying for the subsidy they get by being allowed to pollute or allowed to exploit resources in a way that's inefficient. So we've got to internalise what are now external costs and the environmental management systems and the environmental management tools that we're talking about allow us to internalise those external costs.

Professor Dixon Thompson,
University of Calgary
Thursday, April 29, 1999 Calgary

How can we increase co-ordination between the WTO and groups like Codex Alimentarius and the International Standardization Organization. These groups are making the standards that prevent trade agreements and perhaps we should look how to include non-state actors directly in these processes instead of through their governments.

Julie Soloway, Centre for International Studies,
University of Toronto
Tuesday, April 27, 1999 Toronto

Recent trade negotiations have focused on the removal of barriers to trade and investment, with only voluntary guidelines to temper the negative impacts that this might have on society and the environment. One of the main problems is that countries are not allowed to differentiate goods and services based on how they are produced. This is undermining economic and social development...For example, countries cannot favour lumber and paper products which meet the requirements of the Forest Stewardship Council, or carpets that meet the requirements of the International Labour Organization child labour codes. A new approach to trade and investment is needed that would regulate trade and investment for the world's overall benefit, while at the same time providing a common set of rules and protection for traders and investors.

Carolyn Taylor, Saskatchewan Environmental Society
Friday, April 30, 1999 Saskatoon

So far we've had a number of cases brought against Canadian environmental regulations... regarding the ban on the use of MMT exports, to PCBs and exports of fresh water. These have spurred the cause for greater transparency and accountability in the dispute resolution processes so that environmental concerns and public concerns can be taken into account. We are already seeing some changes in the World Trade Organization that are very promising, such as the restriction of documents, the ability of third parties to make amicus-brief submissions, and ongoing consultation.

Janine Ferretti, North American Commission for Environmental Cooperation
Monday, April 26, 1999 Winnipeg

In 1996, the U.S. threatened to impose economic sanctions on Canada after the illegal whale hunt took place, but then abandoned its plan when Canada threatened to make a formal complaint to the WTO/GATT declaring sanctions would be in violation of free trade agreements. The WTO seems to consider environmental and workplace standards to be 'Technical Barriers to Trade.'

Annelise Sorg, Canadian Marine Environment Protection Society
Tuesday, April 27, 1999 Vancouver

Canada is a trading nation and Canadians are fair minded people. We want to engage in trade and investment that truly values people and the environment. We have a responsibility to engage in genuinely sustainable development – development that meets the needs of current generations without sacrificing the needs of future generations to come. Unbridled trade and investment liberalization is not capable of achieving sustainable development.

Jeff Keighley, Canadian Auto Workers in British Columbia
Monday, April 26, 1999 Vancouver

Canada has the opportunity to act as a bridge between the powerful nations and the poor nations in brokering agreement on rules which can respect environment, trade objectives and development objectives at the same time...we should be seeking a WTO negotiation in which the well-being of people is front and centre. Environmental quality and sustainable resource use should not be sacrificed for the sake of expanded trade.

Aaron Cosbey and Dr. Arthur Hanson, International Institute for Sustainable Development
Monday, April 26, 1999 Winnipeg

Sustainable development is uniformly noticeable by its absence in any of these new proposals [for the next Round of the WTO].

Dr. Peter Carter, Canadian Association of Physicians for the Environment
Tuesday, April 27, 1999 Vancouver

[The] CEIA strongly recommends that Canada put forward the following principles to guide international negotiations seeking to address the needs of sovereign nations to control their environmental resources: to stress the importance of sound environmental science as a basis for decision-making, to apply the precautionary principle as the foundation of public policy, and to recognize the need for a high level of environmental protection as a component of sustainable development. These principles are not mutually incompatible.

Colin Isaacs and Robert Fraser, Canadian Environment Industry Association (CEIA)
Thursday, March 25, 1999 Montreal

The environment must be regarded as a "public trust" by future and present governments of the world. But the fact is recent government and trade body actions have given little reason for the public to trust either of them!

Rob Spring, Canadian Auto Workers (Local 444) Environment Committee
Friday, April 30, 1999 Windsor

Linking Trade, Environment and Health, and Sustainable Development

... the WTO is a strong ally of sustainable development – not its opponent. The preamble to the Marrakesh Agreement establishing the WTO states that our goals include “the optimal use of the world’s resources in accordance with the principles of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so.” These are not empty words. This is a statement of real intent and realizable goals.

Renato Ruggiero, former WTO Director General, Opening Remarks to the High-Level Symposium on Trade and the Environment, Geneva, March 15, 1999

The Committee received some of its most compelling testimony and detailed submissions on the vast and growing range of issues in which economic globalization and rules for liberalized trade confront ecological limits and the diverse, sometimes conflicting, concerns of businesses, consumers, and aroused citizens. Some of these issues – for example, over food safety, as we observed in earlier Chapters – have become major flashpoints in highly-charged disputes between WTO Members over what should be permissible measures that countries can take in order to protect the environment, prevent risks to health, pursue sustainable resource management goals, and preserve biodiversity. There is little doubt that ever increasing flows of traded goods and services and investment impinge on the state of the world’s environment, affect the quality of human and other forms of life, and put in question the sustainability of prevailing economic patterns of production, consumption, and exchange. The stakes are very high and the rationale for collective action is strong, even if consensus is often difficult to achieve.

Virtually all witnesses recognized the extensive environmental and health implications from trade and investment activities, and the consequent need for better integration of policies and regulation at the domestic and international levels. Many argued that for this to happen, improved processes are required both within Canada and multilaterally that are more open, transparent, and publicly accountable; more representative and democratic; more based on shared information and learning;

more constructive, coordinated and coherent. The Committee’s first recommendations in the early part of the Report are aimed at remedying some of these deficiencies.

Much of the testimony also challenged the claims of WTO and government officials that the GATT/WTO system is environmentally “friendly”. The most comprehensive critique, reinforced by other submissions in all regions of Canada, was the “Guide for Environmentalists” prepared for the Common Front on the World Trade Organization and provided to the Committee by Steven Shrybman, Executive Director, West Coast Environmental Law Association. Also in Vancouver, Dr. Peter Carter on behalf of the Canadian Association of Physicians for the Environment submitted detailed documentation on the numerous weaknesses in the existing trade policy frameworks, also suggesting ways of profiting from promising work at the multilateral level – notably following up the leading-edge 1997 Report of the OECD’s High-Level Advisory Group on the Environment, which was also favourably cited by the International Institute for Sustainable Development in Winnipeg. The IISD’s submission was packed with constructive proposals for “mainstreaming” sustainable development principles within the trade regime. In Toronto, Professor John Kirton and Julie Soloway of the University of Toronto argued that the WTO still lags far behind on environmental issues, but that it could learn much from the NAFTA experience on environmental cooperation. However, that was

disputed by Michelle Swenarchuk of the Canadian Environmental Law Association and Christine Elwell of the Sierra Club, who saw at all levels many more losses than gains from trade in the environmental column over the past five years.

At the same time, the Committee also heard views from agricultural and resource-based industries concerned that ambiguities in the trade rules themselves (notably in the SPS and TBT Agreements, although environmental ramifications cut across the WTO spectrum, including the GATS and TRIPS agreements), and their relationship to international environmental agreements, combined with dubious trade-related environmental measures (TREMS), may add up to new forms of disguised "green protectionism," putting Canadian export markets and investments at risk without in fact serving legitimate public purposes. Their demand was for clear, explicitly-defined, and soundly-based rules and that would not jeopardize the viability of businesses and the jobs and incomes dependent on them. Other witnesses pointed to the need to overcome the suspicions of many developing countries about the possible protectionist intent of stringent environmental and health regulations imposed by developed country governments. Yet, as we observed in other chapters, citizens and consumers everywhere are becoming more conscious of these issues. They are also becoming more assertive of their rights in relation to how the market place operates and how it affects the rights of others with whom they share the planet, especially vulnerable human groups and communities and threatened plant and animal species.

Clearly there is a large potential for polarizing debates around such topics, which would probably produce more paralysis than progress in the trade system's as yet timid attempts to grapple with these policy and legal conundrums. To get past this and into the starting gate, the Committee appreciated the approach set out by Janine Ferretti, Director of the North American Commission for Environmental Cooperation,

which, in addition to raising the central issues of public transparency, access, and participation, identified several other main groups of concerns that should be in the forefront of progressive policy development. One of these has to do with improved understanding of *environmental impact assessments* of liberalized trade, and improved processes for conducting these assessments. Many witnesses were concerned that we may be rushing down an unwise "more of the same" path, without having really understood the impact of the Uruguay Round, and without taking adequate precautions entering new negotiations.

Another broad category of issues has to do with the future definition of the trade rules so that they can, without contradicting their own purposes, support important environmental and public health objectives. In this regard, Ferretti suggested a particular focus on three areas: resolving the ambivalent relationship between GATT/WTO rules and the provisions of multilateral environmental agreements (MEAs, of which there are currently over 180); resolving an array of problems surrounding process and production methods (PPMs), the growing use of eco-labelling and certification schemes, and their appropriate treatment under GATT/WTO rules; promoting positive linkages whereby "liberalized trade can actually be mutually reinforcing with environmental protection." She pointed to recent estimates "that the environmental goods and services sector in Canada is \$22 billion per year. That figure will expand in the future, especially as we're looking at climate change response policies alone. Canada can take a leadership role as well in pushing for honest discussions to end environmentally harmful subsidies in agriculture and fisheries." (*Evidence*, Meeting No 119, April 26, 1999, Winnipeg)

The message of opportunity was reinforced in other presentations. In Calgary, Professor Dixon Thompson and the Ekos Group of the University of Calgary Faculty of Environmental Design made a strong argument for government encouragement and facilitation of environmental management systems and tools as part of an aggressive trade

and environment negotiating agenda. (*Evidence*, Meeting No. 125, April 29, 1999, Calgary) In Montreal, representatives from the Canadian Environment Industry Association told the Committee that Canadian governments must be more proactive in a number of fields where export and domestic/international environmental benefits can be realized simultaneously. For example, Colin Isaacs, Chair of their National Policy Committee, stated that: "Canada has been a leader in development of environmental management systems and in environmental certification and eco-labelling, yet our domestic implementation often falls behind our international objectives." He suggested that Canada's ability to compete in international markets will suffer unless our governments get behind the adoption of leading-edge standards within Canada in ways that match international expectations. (*Evidence*, Meeting No. 110, March 25, 1999, Montreal)

The Committee cannot possibly address all of the issues that were drawn to its attention under the rubric of this Chapter; nor do we claim special expertise in many of these matters, which call for ongoing intensive study and public scrutiny involving all stakeholders. What we can do is highlight certain priority directions for Canada to pursue with other WTO members leading up to and following the Seattle Conference in order to advance a workable integration of trade and environment/health/sustainable development

policies within the structures, practices, and disciplines of the WTO regime. Before turning to that, the next sections first briefly reviews the record of that regime and then considers a number of proposals for its improvement.

GATT/WTO Consideration of Environment-Related Issues

Although the GATT does contain some provisions which have environmental and health implications, there was no separate negotiating group on these issues¹ during the seven-year course of the Uruguay Round, which therefore left a great deal unresolved and many critics deeply unsatisfied at the result.² The Marrakesh Ministerial decisions of 1994 did nonetheless lead to the establishment of a Committee on Trade and Environment (CTE), which met for the first time in 1995 with a mandate to consider ten items encompassing all aspects of the trading system (see Box 12.1) including those of transparency and relations with NGOs. A lengthy background document prepared by the Trade and Environment Division of the WTO Secretariat for the March 1999 High-Level Symposium on Trade and Environment reviews the activities of the CTE. In addition, it reviews the historical record of the GATT; the environment-related provisions in the major WTO agreements (beyond the hortatory language of the preamble cited by Ruggiero); and the dozen cases concerning the environment and human or animal health which have gone to

¹ There was only a Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances which was established in 1989 but never produced any agreed text. This item was carried over into the work program of the WTO's Committee on Trade and Environment, but has generated very little discussion since.

² The unfinished business under debate did at least stimulate some early thinking on the subject among Canadian trade policy officials. See, for example, the contributions to Keith Christie, ed., *New Directions: Environment, Labour and the International Trade Agenda*, Carleton University Press, Ottawa, 1995. Useful wide-ranging assessments of the legacy of the Round from an environmental perspective include: Daniel Esty, *Greening the GATT: Trade, Environment and the Future*, Institute for International Economics, Washington D.C., July 1994; Jennifer Schultz, "The GATT/WTO Committee on Trade and Environment – Towards Environmental Reform," *American Journal of International Law*, April 1995, pp. 423–39; Graham Dunkley, *The Free Trade Adventure: The Uruguay Round and Globalism – A Critique*, Melbourne University Press, Melbourne, 1997; John Whalley and Peter Uimonen, *Environmental Issues in the New World Trading System*, Macmillan Press, London, 1997.

Box 12.1 Mandate of the WTO's Committee on Trade and Environment as itemized in the Marrakesh Decision of April 1994

- Item 1 : "The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;"
- Item 2 : "the relationship between environmental policies is relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"
- Item 3: "the relationship between the provisions of the multilateral trading system and:
 - (a) charges and taxes for environmental purposes
 - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labeling and recycling"
- Item 4: "the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects"
- Item 5: "the relationship between the dispute settlement mechanism in the multilateral trading system and those found in multilateral environmental agreements"
- Item 6: "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions"
- Item 7: "the issue of exports of domestically prohibited goods"
- Item 8: "TRIPs"
- Item 9: "Services"
- Item 10: "appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation".

dispute resolution panels.³ A full report of the Symposium has also been released. In Canada, DFAIT has released a "Trade and Environment" consultation paper which reviews the work of the CTE and current policy issues from the Government of Canada's perspective.⁴

What are the key GATT/WTO rules that bear on environmental and health regulation? The GATT regime's long-established principle of "non-discrimination" means that foreign "like products" must receive "national treatment" in the

importing country (as defined by Article III), and accordingly cannot, as a rule, be excluded or otherwise subjected to discriminatory treatment on the basis of where they come from or how they are produced. However this general GATT rule is subject to some general exceptions as set out in Article XX. In particular, countries are allowed to introduce discriminatory measures *within their domestic jurisdictions* "necessary to protect human, animal or plant life or health" as well as for "conservation of natural resources." At the same time, the introductory so-called "chapeau"

³ The document cites six relevant panel reports under the GATT 1947-94 – the most recent three being decisions, which were not adopted, against U.S. environmental protection measures – and six panels established since the entry into force of the WTO in 1995. Of these, four have reported and each has been appealed to the Appellate Body. In each case the WTO has ruled against the defendants (finding, for example, the environmental or health regulatory measures in dispute to be non-conforming), and these decisions have all been adopted. Two cases are still pending, including one brought by Canada against the EU in 1998 on measures affecting asbestos and asbestos products. So far, WTO panel proceedings involving environment/health considerations have been initiated against the U.S. twice, the EU twice, Australia and Japan once each, Canada being a complainant in three of these cases.

⁴ These have been posted on the WTO and DFAIT Websites at: www.wto.org and www.dfaît-maeci.gc.ca.

to Article XX, limits such measures. They must not be “arbitrary or unjustifiable” or constitute a “disguised restriction on international trade.” All of this has been subject to differing interpretations and has given rise to heated disputes. Moreover, it is unclear whether the rules governing “like products” effectively rule out countries proactively setting higher environmental standards for process and production methods (PPMs) that have an *extraterritorial* scope of application to imported products.

Critics allege that to date GATT/WTO dispute resolution panels (see footnote 3) have taken the narrow view and in the final analysis consistently put free trade ahead of environmental considerations. As Michelle Swenarchuk observed: “It is important to understand that the GATT/WTO could have accommodated environmental and health concerns from the beginning, given the wording of Article XX. However, every case has gone against national standards, leading to the systematic elimination of governmental options thought to be previously available under the article.” (*Submission*, Canadian Environmental Law Association, April 28, 1999, Toronto, p.4)

In several GATT/WTO dispute panel cases that have raised widespread alarm, developing countries were able to successfully challenge U.S. trade restrictions on imported products using PPMs deemed by the U.S. to endanger certain marine species. In the 1991 *tuna–dolphin* case, Mexico won a ruling against a U.S. ban on imported tuna caught with nets it determined to be lethal to dolphins. GATT ruled that the U.S. could not use marine conservation PPM standards to discriminate against products beyond its territorial jurisdiction. A more recent contested case involves a U.S. ban on shrimp trawled using PPMs it deems to be harmful to a species of sea turtles that are protected under the Convention on International Trade in Endangered Species (CITES), though that MEA contains no provisions explicitly authorizing unilateral PPM-based restrictions. The WTO’s Appellate Body

eventually upheld the original panel ruling against the U.S. law. In both cases, however, the U.S. has refused to change the offending provisions of its *Marine Mammal Protection Act*.

In the WTO’s defence, it has been claimed that its rules have never directly conflicted with the provisions of any multilateral environmental agreement, and the *shrimp–turtle* appeal process did consider environmental factors as well as allowing seven NGO amicus briefs to be submitted for the first time, even if not formally considered by the appeal panel. Environmentalists see the result as still giving commercial market access paramountcy over environmental goals. Such cases also reveal the problems that arise from unilateral trade measures of extraterritorial application, even if taken for laudable conservation purposes, in order to fill the gaps when the international environmental instruments may not be sufficiently developed or strong enough to do the job. This in turn raises questions as to whether the whole concept of non-discrimination on the basis of national treatment rules needs to be reconsidered and clarified in order to better accommodate valid environmental, health, social, and sustainable resource–use concerns about the manner in which tradeable goods are produced for export.

Another area of major controversy that has led to damaging and potentially very costly WTO disputes surrounds the introduction of new, more stringent, and consumer–conscious product standards, labelling practices, and health regulations, and their compatibility under GATT/WTO rules, including the TBT and SPS Agreements which have been referred to in earlier Chapters (see 3 through 5). Producer groups and Canadian exporters generally are asking for clear, transparent rules that are based on sound “scientific” principles and do not unduly discriminate against market access for Canadian products. For example, access for Canadian as well as U.S. hormone–treated beef into the EU, or labelling/certification requirements for genetically modified foods or for Canadian forest products. The DFAIT consultation paper on the SPS

Agreement reflects these concerns and argues against allowing "non-scientific factors" to be considered. "While countries need to address legitimate consumer concerns in public policy, these concerns should not be used to unjustifiably restrict imports."⁵

What is, or is not, "justifiable," is not so evident, however. Environmental and labour organizations who appeared before the Committee criticized what they saw as an overriding commitment to furthering trade at the expense of action to protect the environment and human health. Moreover, there was a lack of confidence in the WTO's approach to risk-assessment and product regulation criteria and in the referral of such matters to associated international standard-setting bodies (the International Organization for Standardization, for example, which sets ISO standards, and the Codex Alimentarius Commission in regard to food safety), or to "codes of good practice" such as that in the TBT. Other WTO rules under the TRIPS and GATS agreements may also increasingly come into question on public health as well as environmental and social grounds.⁶ Given rising consumer consciousness and international citizens' advocacy, it is clear that there is much work to be done at international negotiating tables to address deficiencies in the current regime. Winnipeg's International Institute for Sustainable Development also made the point that the WTO must begin the complex task of developing appropriate rules for incorporating the "precautionary principle, or precautionary approach, [which] is an established feature of international law." (*Evidence*, Meeting No. 95,

March 4, 1999 and Meeting No. 119, April 26, 1999, Winnipeg)

Sustainable Development Principles and Proposals for Reform

Notwithstanding some progress in the evolving jurisprudence, the underwhelming performance to date of the WTO's Committee on Trade and Environment, and the controversial record of disputed GATT/WTO rulings, have exposed major ambiguities and gaps that require attention at the multilateral level and cannot be put off. There was a general view among witnesses that Canada must be prepared to engage seriously on trade and environment issues going into Seattle. What is less certain is the extent to which these issues can be dealt with by reforms within the existing WTO framework.

At the conclusion of the Uruguay Round, Canada's IISD was in the forefront of promoting the development of a working environmental agenda for the new WTO even before it was up and running, devising a set of seven "Winnipeg principles" for linking trade policies to sustainable development objectives. The seven principles are: efficiency and cost internalization; equity; environmental integrity; subsidiarity; international cooperation; science and precaution; openness.⁷ At the time, there were also calls for the creation of a "Global Environmental Organization" to work in tandem with the GATT/WTO regime to advance environmental objectives and the enforcement of international environmental obligations through the multilateral trading system, thereby steering the U.S. and other countries away from a resort to unilateral measures, as in the notorious *tuna-dolphin* case.⁸

⁵ Department of Foreign Affairs and International Trade, "Sanitary and Phytosanitary Measures", Ottawa, May 1999, pp. 5-6.

⁶ The point was underlined by testimony from health and development NGOs and also featured prominently in the submission to the Committee from the Canadian Labour Congress. For a useful review of the scope of health-related issues, see Dr. Colette Kinnon, "World trade: bringing health into the picture," *World Health Forum*, Vol. 19, 1998, pp. 397-408.

⁷ *Trade and Sustainable Development Principles*, International Institute for Sustainable Development, Winnipeg, February 1994. See also the subsequent publication by Nevin Shaw and Aaron Cosbey, *GATT, the WTO and Sustainable Development: positioning the work program on trade and environment*, IISD, Winnipeg, n.d.

⁸ See especially Daniel Esty, *Greening the GATT* (1994).

At the March 1999 WTO Symposium on Trade and Environment, Director General Ruggiero seemed to come around to this idea, which was endorsed by Dr. Peter Carter's testimony in Vancouver. However, others are doubtful whether creating a separate new international bureaucracy is the answer, or feasible in the current climate. There is a stronger consensus that, at a minimum, better integrating and bridging mechanisms are needed. The IISD's submissions therefore suggested establishing a multilateral forum, a "Standing Conference on Trade and Environment," to bring the WTO together with other key environmental actors to work on solving problems and potential conflicts before they escalate.

The WTO itself will also need to change much more than it has already. John Kirton and Julie Soloway referred to the WTO as currently constructed as "highly inadequate" and lacking "environmental expertise and sensitivity in organizational culture" in the absence of any effective counterpart global environmental organization to balance and integrate trade and environmental values. (*Submission*, John Kirton and Julie Soloway, April 27, 1999, Toronto) An independent assessment of the WTO done by IISD several years ago expressed disappointment over its conservative tendencies and the continued weakness of the CTE, lamenting that "a culture of closed decision-making has persisted, inefficient internal structures have carried over without reflection, and the dispute resolution process resembles the rules committee of a private club."⁹ That progress report urged WTO Members to give attention to the following:

- much more open dispute resolution procedures, including access by interested non-governmental parties, and utilization of environmental expertise;
- public scrutiny of trade-related environmental measures (TREMS) taken by

WTO members beyond the current transparency and notification requirements;

- incentives to developing countries, many of which are suspicious of protectionist motives, to support a sustainable development agenda which includes guarantees of better market access and progress in reducing trade-distorting subsidies in Northern countries;
- greater attention to the shift to eco-efficient technologies and to environmental services under the TRIPS agreement and the GATS;
- new accords on the use of PPMs to promote sustainable development, ideally as part of a new WTO "Agreement on Trade and Environment."

The comprehensive submissions from the IISD to the Committee added useful elaborations to that reform menu, making abundantly apparent that every part of the existing WTO framework of agreements and the "built-in" and new negotiating agenda, requires thorough assessment on the basis of sustainable development principles. We note, as well, that the Government's consultation paper on "Trade and Environment" seems to endorse an approach that would "mainstream" trade and environment concerns across all relevant negotiations. In addition, it calls for collaboration among WTO Members "on an ongoing environmental review of the next WTO negotiations." However, in IISD's considered view, the existing CTE process will not be enough to do the job of effectively mainstreaming sustainability principles throughout the WTO system. They therefore called for the WTO's General Council to commission the preparation of a "Sustainable Development Agenda," using a process similar to the OECD's High-Level Advisory Group cited earlier. Connected to that, they also urged establishment of an independent "inspection panel" (as the World Bank has now done) which would produce a regular "public report card"

⁹ *The World Trade Organization and Sustainable Development: An Independent Assessment Summary*, IISD, Winnipeg, 1996, pp. 4–5.

monitoring progress on sustainable development goals.

A number of presentations emphasized the need for more openness by WTO bodies to public participation in the review of various agreements, and for more rigorous and comprehensive environmental impact assessment processes before, during, and following WTO negotiations. These are areas where Canada can continue to take a lead role. As we noted in Chapter 3, better use could also be made of the WTO's Trade Policy Review Mechanism (TPRM) in terms of both public involvement and scrutiny of domestic environmental effects. Some submissions, such as from the Saskatchewan Environmental Society (*Evidence*, Meeting No. 128, April 30, 1999, Saskatoon), argued that not only must the trade rules be crafted so that they are consistent with environmental and public health priorities and reinforce rather than weaken standards in these areas, but the responsible implementing bodies should also provide citizens and consumers with information that allows them to make environmentally responsible choices. This brings up the thorny issue of finding a trade-friendly way to regulate PPMs in the public interest. The IISD suggested that these issues may be best addressed through a WTO Trade and Environment Agreement, because, as they put it, product discrimination "is fundamental to creating market-based incentives favouring environmentally-responsible production and consumption... The challenge is to develop a system of rules within which it could work without protectionist abuse." (*Submission*, International Institute for Sustainable Development, April 26, 1999, Winnipeg p. 11)

Consistent with Canadian negotiating priorities, there are other areas as well where the role of market-based incentives should be emphasized, such as removing distorting subsidies which have done so much to hurt Canadian farmers, and which penalize efficient producers more generally. Economically and environmentally perverse subsidies – which the IISD calculates have reached a worldwide level of \$U.S. 1.5 trillion per annum – are "an enormous force for unsustainable development." However, the Institute also cautioned the Committee that knocking down trade barriers, as in agriculture, should be done with careful forethought, and "without creating market conditions which threaten the character and sustainability of cultural landscapes in Europe and some countries in Asia." (*Submission*, April 26, 1999, p. 2) Along with many other witnesses, the IISD also expressed reservations about developments at the WTO in newer areas such as intellectual property, investment, and competition policy — all areas where powerful corporate actors have major interests. The group suggested that the current framework for dealing with such issues is ill-suited to a sustainable development agenda. Such an agenda must be one which looks first to the general public good and does not neglect the needs of poorer countries and people.

Overall, if progress is to be made on sustainable development terms, the WTO will have to strive for a better balance in its approach to trade-related regulations and disciplines within a globally integrated marketplace. A major test going into Seattle will also be to develop a realistic approach to a package of high priority environment-linked trade issues that can find some common ground among both industrialized and developing countries.¹⁰ Gilbert Winham and

¹⁰ In this regard, the perfect may be the enemy of the good. Clearly the global trading system is not going to undergo a revolutionary reform quickly or easily. One prominent analyst has suggested that an achievable agenda for an early trade and environment negotiation might include elements such as a WTO mechanism for reviewing and approving international environmental agreements together with a waiver for existing agreements; a negotiated list of cross-border environmental damages over which it would be agreed that unilateral trade-related responses (i.e. TREMS) could be taken by countries without these being subject to WTO dispute; a clarification of the SPS and TBT Agreements in order to provide a better and more objective determination of the acceptable scope of discriminatory regulatory measures taken on environmental and health protection grounds. (Peter Unimonen, "The Environmental Dilemmas of the World Trade Organization", in Schott, *Launching New Global Trade Talks*, 1998, p. 130.)

The most important objective for Canada in any future round of trade negotiations is to preserve the effectiveness of the WTO and to promote its accountability. Unless the WTO clearly contributes to sustainability worldwide it will be increasingly difficult to achieve Canada's trade objectives. (Evidence, International Institute for Sustainable Development, Meeting No. 119, April 26, 1999, Winnipeg).

Canada is in an important position to lead in the area of environmental values and norms. The environment is Canada's primary foreign policy priority according to recent public opinion polls. Canada, as a principal ecological power, has the capacity to lead in the area of trade and environment. (Evidence, John Kirton and Julie Soloway, Meeting No. 122, April 27, 1999, Toronto).

Jeffrey Schott were among those who made it a particular point that North–South bargains, based on mutual interests, not an imposition of Western norms, will be needed if future WTO negotiations are to lead to a successful and satisfactory result for all participants is the system.

What Canada Can Do: Challenges, Opportunities, and a Way Forward

The messages that the Committee heard from Canadians, while diverging on some points, were widely supportive of appeals such as those above for Canada to show leadership in pursuing trade and environment negotiations at the WTO. Agricultural, business, and industry spokespersons acknowledged that the trading system must address a growing number of environmental, health, and sustainable development challenges. Most, however, argued for containing the scope of these considerations within clear, scientifically-based rules, and within a multilaterally negotiated framework that would limit discriminatory practices, unilateral extraterritorial measures, and potential misuses of regulation for protectionist purposes. Other witnesses argued even more strongly that if anything should be restricted, it should be the use of trade disciplines to weaken public-interest regulation. In negotiating rules and standards, governments and the organizations, such as the WTO, controlled by them, must put the interests of future generations and citizens as a whole first, and not be swayed by the powerful lobbies of private corporate interests. Some witnesses were very critical of the official record, and urged

fundamental and far-reaching reforms to ensure that the means of freer trade do not become an end in themselves, but are made compatible with environmental, public health, and local to global sustainable development goals.

On the opportunity side, the Committee welcomed those presentations which offered constructive proposals to bring together the trade and environmental agendas: through a “constitutional” recognition of sustainability principles as applying to all parts of the WTO regime; through well thought out institutional and process improvements and bridging mechanisms; through cooperative efforts to resolve legal ambiguities and raise standards (i.e. in regard to the enforcement of multilateral environmental obligations, improved dispute resolution and risk assessment procedures, and negotiated agreements governing PPMs); through mutually reinforcing market incentives and disciplines (i.e. in the area of trade-distorting and environmentally perverse subsidies); through building capacity for sound environmental management — facilitating knowledge transfers, and promoting a vibrant environmental services sector within Canada, which, as we heard from the Canadian Environment Industry Association, has impressive export potential.

None of this will happen without some very concerted action by governments. Domestically, further intensive consultations with all stakeholders, including other levels of government, should take place as soon as possible with the aim of establishing common ground so

that Canada will have the benefit of a solid basis of support at home for bringing forward a progressive trade and sustainable development agenda to the Seattle Conference. It is crucial to begin to put in place now a process which will also serve public participation and education objectives beyond the Seattle meeting. Among

other WTO Members, Canada should be indicating clearly the importance of mainstreaming environmental concerns within the WTO, and of reaching out to key countries from the developing world in testing ideas for workable reforms.

Recommendation 36

Given that progress on trade and environment issues cutting across many areas of WTO negotiations may be critical to the success of a new round, and the need – following the example of the national consultations on agriculture – to seek further common ground within Canada, the Government should make full use of the Environmental SAGIT for the explicit purpose of developing a coherent and proactive Canadian agenda to take to the WTO Ministerial Conference in Seattle.

Recommendation 37

In preparing the Canadian position for Seattle, the Government should in particular study proposals to:

- raise the profile of sustainable development issues within the WTO's work program through high-level attention;
 - strengthen environmental impact assessment, including through more creative use of the Trade Policy Review Mechanism;
 - achieve early results in areas where trade liberalization and environmental objectives can be mutually reinforcing (i.e. subsidies reduction);
 - establish bridging mechanisms to international bodies with environmental and health protection mandates;
 - work to clarify ambiguities in existing rules, to open up the dispute resolution process to more environmental expertise, and to improve transparency;
 - work towards the clarification of the WTO rules to clearly uphold obligations under multilateral environmental agreements, and provide better multilateral disciplines governing trade-related environmental and health measures including regulations and other initiatives (i.e. voluntary codes) pertaining to process and production methods;
 - strengthen the capacity of the WTO in coordinating action with other international agencies to assist poorer countries, especially the least developed, in meeting higher standards of environmental review and protection.
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Recommendation 38

Where appropriate, Canadian delegations to WTO meetings should include recognized expertise in environmental and health matters, and such expertise should also be present on Canadian negotiating teams throughout all future negotiation processes.

LINKING TRADE, LABOUR STANDARDS, AND HUMAN RIGHTS

“What Canadians are Saying”

Trade should not be dictating the establishment of human rights. Rather, human rights should be informing the structure of trade.

Cecily Nicholson , Oxfam Canada, London Branch
Thursday, April 29, 1999 London

It was not long ago that [human rights] issues were considered completely separate from trade, to be discussed only by select representatives of the business community behind closed doors with technical experts. While human rights have yet to become front and centre in trade discussions, they are undeniably recognized today as a key part of the picture. It's therefore our responsibility and yours, as legislators, to ensure that the new rules that are put into place are compatible with existing international human rights standards... Canada needs to assess the impacts its trade policies will have on gender equality, paying particular attention to women workers, migrant workers and rural women in developing countries.

Warren Allmand, International Centre
for Human Rights and Democratic Development
Wednesday, March 24, 1999 Montreal

Trade is an everyday vehicle by which people interact. Trade affects our social lives, our health, our economic lives, the environment, our political system, our democratic rights. The fact that in today's global trading system... and the movement of people plays such an integral role fully necessitates that trade policy be negotiated within a human rights framework.

Joan Grant-Cummings, National Action Committee on the Status of Women
Tuesday, April 27, 1999 Toronto

...we are very skeptical of having too much power invested in organizations that are nominally to deal with trade issues, when in fact they're not competent to judge whether human rights standards are being dealt with.

John Dillon, Common Frontiers
Tuesday, April 27, 1999 Toronto

I have become aware that many people in Canada have had few opportunities to get the information we all need about existing living and labour conditions around the world in order to make good choices. I thank the Canadian government for agreeing to a government task force on sweatshop labour: this move will help inform the public about our trade options.

Beverley Brown, National Anti-Poverty Organization
March 22, 1999 St. John's

Too often we've learned consumers like ourselves in rich countries benefit from inexpensive products, while producers in poor countries suffer low wages, sweatshop working conditions, unstable employment, and a long list of other difficulties, no doubt, meanwhile the traders collect handsome profits. The World Trade Organization, if it deserves the name, ought to be concerned about such abuses of international trade, which surely violate human security, at least in the producing countries. I would hope and expect that Canada will work in the WTO towards the development of policies and regulations that would prevent this kind of exploitation.

Hugh Dempster
Monday, April 26, 1999 Vancouver

Our concern is that in recent years trade agreements invariably promoting the case of something called 'free trade' have been structured to make it far easier for multinational corporations to move capital, operations and jobs throughout the world. This has been at the expense of Canadian citizens and the communities in which they live. This must end...Canada must insist that future trade and development agreements include a commitment to the principles of democracy and full respect for human and labour rights. Canada should therefore make it clear, in any set of negotiations in which it participates (and in any other forum), that no strategy of economic integration can cast aside the respect that must exist for the political, social, labour and economic rights of every citizen.

James Clancy, National Union of Public and General Employees
Tuesday, April 27, 1999 Toronto

There is one procedural initiative which could also bring a good deal of light to the ongoing debate over new trade and investment initiatives. Very simply, Canada needs to create, on an ongoing basis, both institutional and parliamentary review mechanisms which assess in detail the human rights implications of proposed trade and investment agreements.

Professor John Foster, College of Law, University of Saskatchewan
Friday, April 30, 1999 Saskatoon

...we ask that Canada insist upon continuing discussions during the upcoming round of negotiations with a view to defining true co-operation between the ILO and the WTO. We must recognize that the ILO has exclusive authority and jurisdiction to deal with labour issues; support the creation of a joint WTO-ILO working group that would define the best mechanisms and structures to be introduced; determine what mechanisms should be implemented to enforce workers' rights; request that a social clause be added to the WTO; and finally, fight for observer status for the ILO in all WTO structures so as to create strong ties between fundamental workers' rights and trade in all WTO efforts, particularly when the WTO reviews the trade policies of member countries. If we can attain such transparency, and ensure that unions and other groups are present, we will not repeat the mistakes made with the MAI.

Henri Massé, Fédération des travailleurs et travailleuses du Québec (FTQ)
Wednesday, March 24, 1999 Montreal

The workers of London want improved world trade but the benefits must flow to working people not just the wealthy elite. WTO rules are weakening governments and dismantling the democratic rights of workers to control their future... We need democratic reforms to WTO rules and a strong workers' rights clause.

Gil Warren and Bob Sexsmith, London and District Labour Council
Thursday, April 29, 1999 London

I am under no illusion that it will be easy to insert such social clauses into the WTO and other regional trading agreements. Even if the political will existed, there would be plenty of difficulties in setting definitions and penalties. The devil, as they say, is always in the details. But surely global trading arrangements must provide a level playing field not only for business but for labour as well – not to mention the implications for the pursuit of human rights.

Simon Rosenblum, World Federalists of Canada
Tuesday, April 27, 1999 Toronto

The clause on workers' rights is not about imposing rules that come from industrialized countries. The aim is to help prevent the most extreme forms of exploitation to which women and children are especially subjected... If the clause were included in the trade agreements, all the binding mechanisms, including trade sanctions as a last resort, would be available to ensure compliance with it. The fact that the clause would be binding is the main innovative feature of this proposal. It should be emphasized, however, that penalties would be applied only where flagrant and persistent abuses were reported and where technical assistance, advice, and proposals from the ILO aimed at correcting the situation yielded no results, even after considerably long periods.

Claudette Carboneau, Confédération des syndicats nationaux (CSN)
Wednesday, March 24, 1999 Montreal

For far too long, the negotiation of trade agreements has been seen as an exercise properly involving only those with business interests.... What values are reflected in regimes that deem actions to protect the rights of people to be inappropriate while the rights of owners of capital are sacrosanct to the point where governments must be prohibited from interfering with them?

Hugh MacKenzie and Lawrence McBreaty, United Steelworkers of America
Tuesday, April 27, 1999 Toronto

The Place of Labour and Social Standards in the GATT/WTO Regime

Do we want to take the "T" out of WTO and call it the World Organization and have it gradually replace the United Nations? Is it really better to negotiate labour matters in the WTO than in the ILO where there is already provision for representation by labour unions to be directly involved in the discussion. I suspect with the WTO's consensus principle that it's impossible to imagine circumstances in which governments would ever agree to allow labour unions to participate directly in WTO meetings.

– John Weekes, Ambassador of Canada to the WTO,
Evidence, Meeting No. 133, May 11, 1999.

It's like we're operating in two different worlds. There's the Geneva world for labour folks, where we are patted on the head and said "Nice job, we've got some really good standards; now we can all feel good." And then all of the corporations that were involved in setting those standards and all of the governments that were involved in setting them, go off to other international forums and ignore what they did in that one. And we're saying that that's just got to come to an end, that when governments go to Geneva, unless it's an institutionalized hypocrisy, that shouldn't be tolerated anymore. If they say in Geneva on a labour standard that they are prepared to make their commitment [at the ILO], then that commitment should follow through into other forums.

– Larry Brown, Secretary Treasurer, National Union of Public and
General Employees, Evidence, Meeting No. 122, April 27, 1999.

Unlike environmental issues, which have found their way into the WTO's work program through the Committee on Trade and Environment, albeit in a restricted fashion, all efforts to introduce a similar consideration of labour and social standards into the GATT and the WTO have so far been unsuccessful. The resulting void is ironic in that these were issues that were very much on the minds of government officials at the time of the GATT's origins in the late 1940s. The UN Conference, which had tried to establish an ITO, (and which elected a Canadian, Dana Wilgress, to chair its Interim Commission¹) had addressed trade and employment. The stillborn "Havana Charter," which delegates devised, explicitly recognized that:

...all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade and accordingly each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within the territory.²

In contrast to the above, the GATT, which originally included only several dozen mostly industrialized capitalist countries, was essentially

¹ See Michael Hart, *Fifty Years of Canadian Tradecraft: Canada at the GATT 1947–1997*, Chapter 3 "Not the ITO: Canada and the Founding of the GATT," Centre for Trade Policy and Law, Ottawa, 1998, pp. 46–53.

² Cited in Raj Bhala, "Clarifying the Trade–Labor Link," *Columbia Journal of Transnational Law*, Vol. 37, No. 1, 1998, pp. 30–31.

silent on the labour and social conditions of trade. There was only a brief preambular reference to “raising living standards,” and one specific exception allowed under Article XX(e), which permits countries to ban the import of goods made with prison labour. Apart from that, GATT disciplines made no provision for discrimination against products on the grounds that they had been made using “unfair” labour practices and therefore constituted a form of “social dumping.”

GATT/WTO rules also do not include any positive binding obligations to comply with internationally recognized labour standards, even though all 134 WTO Members are also members of the 174-member International Labour Organization (ILO), which has been headquartered in Geneva since 1919, and has become a specialized agency of the United Nations.

One of this century’s oldest international organizations, the ILO is dedicated to the defence of worker rights and the improvement of social conditions; to that end adopting over 180 standard-setting conventions, of which Canada has so far ratified 27. The ILO, like the later and much more exclusive OECD, also has a rather unique “tripartite” structure – meaning that trade unions and employers’ associations are represented in its governing structures along with national governments. The ILO has had a long-standing concern with the “social dimensions” of trade, and more recently of globalization overall.³ However, as indicated in the above quote from Larry Brown of NUPGE, there has been a lot of skepticism and frustration about what the ILO can actually do about these dimensions. Many of its members have, like Canada, ratified only a fraction of its conventions. Even if they have, monitoring compliance has been notoriously weak given that the ILO’s enforcement capability has been almost non-existent. ILO standards never made the leap into Geneva’s other emerging multilateral

regime. In fashioning the GATT’s trade rules, it was the politics of commerce which ruled.

Following the creation of the WTO, several European nations and the United States, which has strong and controversial worker rights provisions in its trade laws, pushed to rectify this situation and at least get the most serious labour issues on to the WTO’s work program. That initiative drew lukewarm support among other OECD nations, and strong resistance from a number of developing country governments, some of which suggested that Northern proposals to introduce labour rights codes were really just disguised protectionist attempts to counteract the South’s chief comparative advantage in low-cost labour. Moreover, as Jeffrey Schott observed to the Committee, few countries will agree to have their domestic policies in this area subject to foreign coercion through trade sanctions. At the WTO’s First Ministerial Conference in Singapore in December 1996, a majority of countries opposed to any formal linkage of trade rules and labour standards blocked further consideration of the matter by the WTO. The compromise in the Singapore Ministerial Declaration was to give a qualified (some might say cynical) fillip to the status quo by affirming that WTO Members:

... renew their commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.

³ For a useful survey in the ILO’s journal, see Eddy Lee, “Globalization and Labour Standards: A Review of the Issues,” *International Labour Review*, Summer 1997, pp. 173–89.

And there the matter has rested, more or less. However, there have been some encouraging signs which might be helpful in producing a more constructive result in Seattle. At the institutional level, while there is no formal practice of ILO–WTO collaboration, the ILO has been taking some interesting steps, supported by Canada, to strengthen its role. Witnesses pointed to the Declaration on Fundamental Principles and Rights at Work adopted unanimously by ILO members in June 1998, which pledges members to work towards improved compliance with ILO aims overall whether or not they have ratified particular conventions. The ILO is also working to develop a better instrument to combat the worst forms of child labour exploitation, as was strongly urged by this Committee in its February 1997 Report on that subject. The ILO's June 1999 annual conference is expected to endorse a new draft convention targetting the worst child labour abuses. In March 1999, Juan Somavia of Chile was sworn in as the ILO's ninth Director General, the organization's first from the developing world. Expectations are high that he will be able to breathe new life into the organization and help to bridge North–South divisions. He has also pledged to devote attention to the social development and gender discrimination concerns that were raised by a number of our witnesses.

In recent years there has also been progress in defining what are the "core" standards which can be taken to embody fundamental and universally recognized human rights principles. Seven ILO conventions in particular have been identified as constituting a basis of workers' fundamental human rights.⁴ A major study undertaken by the OECD, which was cited by Professor Errol Mendes and the International Centre for Human

Rights and Democratic Development, articulates the core standards around which there is an emerging international consensus as follows:

- Freedom of association and collective bargaining, such as the right of workers to form organizations of their own choice and to negotiate freely their working conditions with their employers;
- Elimination of exploitative forms of child labour, such as bonded labour and forms of child labour that put the health and safety of children at serious risk;
- Prohibition of forced labour in the form of slavery and compulsory labour;
- Non-discrimination in employment, for example, the right to equal respect and treatment for all workers.⁵

Still, there are a number of technical and political hurdles which stand in the way of progressing to the WTO level. It has been argued that some of the core ILO conventions lack the legal precision and predictability required to link their enforcement to GATT/WTO rules.⁶ Others point to the irony that the U.S., which has created some ill will in leading the charge for a WTO labour rights linkage, has itself so far ratified only one of the ILO "core" seven conventions (nor has it ratified the UN's International Covenant on Economic, Social, and Cultural Rights). Canada at least has ratified four of the seven.⁷ There are also arguments that ad hoc unilateralism, notably by the U.S., and recently a proliferation of voluntary trade-related initiatives (codes of business ethics, social labelling schemes, and so on), have added layers of international suspicion and marketplace confusion which will need to be sorted out before any serious negotiation around trade-linked labour standards could be contemplated.

⁴ These are: C87 on freedom of association; C98 on collective bargaining; C29 and C105 on freedom from forced labour; C100 and C111 on equal remuneration and non-discrimination in employment; C138 on the minimum working age.

⁵ Organisation for Economic Cooperation and Development, *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*, OECD, Paris, 1996, p. 26.

⁶ For example, Robert Stranks, *Look Before You Leap: "Core" Labour Rights*, Policy Staff Commentary No. 14, Department of Foreign Affairs and International Trade, Ottawa, April 1996, p. 9.

⁷ The U.S. ratified C105 in 1991; Canada has ratified C105 (1959), C111 (1964), C87 (1972) and C100 (1972).

Developing countries, which have borne the heaviest burden of structural adjustment and would have the most to fear from the impact of punitive sanctions in this area, have also been offered few positive incentives, such as increased assistance in upgrading domestic standards and enforcement regimes, and in implementing complementary human resource development strategies. Errol Mendes of the University of Ottawa's Human Rights Research and Education Centre stressed the need to develop incentives-based approaches, and suggested that the WTO's Trade Policy Review Mechanism (TPRM) might be employed in this regard – not so much to criticize abuses, as some witnesses implied – but more to provide a channel for constructive advice to countries on reforming their trade-related labour market practices in line with the goals already agreed to in the ILO.⁸ (*Evidence*, Meeting No. 107, March 18, 1999)

Getting Beyond the “Social Clause” Stalemate: Options for Seattle

In order to advance the debate, it is important both to identify what is at issue, and then to develop practical strategies for addressing priority issues at the multilateral level that could bring the WTO into the picture in the most appropriate way.

Given the depth and rapidity of economic and technological changes over the past decade, it should not be surprising that the record of trade liberalization in regard to economic and social well-being was a contested one during the Committee's hearings. Supporters of continued liberalization pointed to the gains from trade and wealth creation and from dynamic adjustments in the Canadian economy. Labour, social, and human rights groups, as well as many individuals, tended instead to see negative effects on their members, their communities, and the social fabric generally, which they attributed, at least in part, to

a harsher environment accompanying the emphasis of recent years on free-trade competitiveness. Yet there was more common ground than appears at first glance in trying to come to terms with the human and social dimensions of trade growth. University of Alberta economists Rolf Mirus and Edward Chambers acknowledged that trade liberalization “has an adverse impact on some;” however, they argued, protection per se is no solution since not only does granting it erode gains which do benefit the poor as well as the better off, it also “represents a tax on all Canadians and encourages lobbying over improving one's competitiveness.” (*Evidence*, Meeting No. 124, April 28, 1999, Edmonton) Jason Myers of the Alliance of Manufacturers & Exporters Canada suggested the necessity of better public policy responses in order to avoid a polarization between “winners” and “losers:”

There is a problem: a growing disparity in income and a growing disparity in terms of the performance of businesses in Canada. But the problem is not in those areas that are open to international trade. In fact, those are the sectors where incomes are growing very rapidly and where employment is growing very rapidly as well. Manufacturing today employs more Canadians than it did back in 1989. ... It would be easier to make the case for open markets if we hadn't seen per-capita income of Canadians drop by 12% since 1989 ... My impression is that as governments, and as associations representing either consumers or businesses or other types of social interests, we still have not realized that Canada is operating in an international market and that we must deal with some of the problems at a public policy level domestically.

(*Evidence*, Meeting No. 95, March 4, 1999)

⁸ The arguments are developed at much greater length in Ozay Mehmet, Errol Mendes and Robert Sinding, “Promoting a Fair Global Marketplace: Is it Time for a Progressive Canadian Agenda?,” *Canadian Foreign Policy*, Winter 1999, pp. 153–73, and in a new book by the same authors, *Towards a Fair Global Labour Market: Avoiding a New Slave Trade*, Routledge, London & New York, 1999.

However, as other witnesses pointed out, in an era of mobile capital and liberalized trade and investment rules, domestic policy regulation to meet labour and social standards is not sufficient and cannot be effective without a corresponding framework at the multilateral level. Moreover, it seems likely that only such an agreed upon framework governing the system as a whole will be able to resist pressures for protectionist measures in its different parts, and thereby avoid pitting social sectors and regions against each other to the detriment of the general welfare. Canadians, it was argued, do not want to see countries or companies, including their own, attempt to grab or hold on to market share at the expense of deteriorating working and social conditions. As was pointed out by Ann Weston of the North-South Institute, an increasing resort to initiatives aimed at consumer consciousness – for example, social-labelling campaigns against sweatshop abuses domestically and internationally – provides a further argument in favour of multilateral regulation. (*Evidence*, Meeting No. 102, March 18, 1999) While the ILO may in future be able to play a more vigorous role in monitoring compliance with its core conventions, providing advice and technical assistance, she argued that the WTO will soon have to address these matters if there is to be a multilateral commitment to transparency and fairness in the use of trade-linked measures which invoke labour, social, and other human rights-based standards.

The debate over incorporating a "social clause" into the GATT/WTO framework⁹ clearly is moving into non-traditional areas, and will involve not only enjoining countries to adhere to their ILO commitments, but crafting additional rules at the global level concerning the way that products and investments are made and how

commerce is conducted. Attempting to negotiate such rules will inevitably touch on some very sensitive and controversial matters within and among societies. Yet, as the ICHRDD's submission pointed out: "the once commonplace argument that the world trade law regime deals solely with products in trade, and not the fashion by which they are produced, is not longer true. With the inclusion of the Agreement on Trade Related Intellectual Property (TRIPS), the WTO now grapples with products produced with pirated technology, but still is not able to deal with labour practices unlawful in international law." (*Submission*, International Centre for Human Rights and International Development, March 24, 1999, Montréal, p. 17) To avoid problems of unilateralism and extraterritoriality, this argument favours a solution involving the WTO. However, as Michael Hart has written, "if the trading system's procedures are to achieve the legitimacy required to address such delicate issues as labour standards or cultural identity, they will need to become more transparent and there will have to be wider participation in rule making and dispute settlement". (*Submission*, April 26, 1999, Vancouver, p. 17)

Short of a full-scale "social clause" or, as the ICHRDD refers to it, an "Agreement on Trade-Related Aspects of International Labour Standards," there may be some smaller progressive steps that like-minded countries, including Canada, could promote leading up to the Seattle Conference. This might include actions such as the following suggestions by a U.S. analyst:

- Committing to vigorous implementation of the ILO's June 1998 Declaration calling for expanded monitoring and review of its core conventions, with systematic reporting "focusing attention on the most egregious violations";

⁹ For some useful reviews of this longstanding debate see Erika de Wet, "Labour Standards in Globalized Economy: The Inclusion of a Social Clause in the General Agreement on Tariffs and Trade/World Trade Organization," *Human Rights Quarterly*, Vol. 17, 1995, p.p. 443–62; Sophie Dufour, "La libéralisation des échanges mondiaux et le respect des règles fondamentales en matière sociale: un lien controversé," *Études internationales*, June 1995, p.p. 275–89; Christine Elwell, *Human Rights, Labour Standards and the New WTO: Opportunities for a Linkage – A Canadian Perspective*, International Centre for Human Rights and Democratic Development, Montreal, 1995.

- Explicitly addressing forced labour, not just prison labour, through enlarging the GATT Article XX(e);
- Monitoring derogations from national labour (and environmental) standards in 'maquila' and export processing zones through the WTO's TPRM and, in that context, appointing a "committee on trade and labour standards to make proposals in the near term on how such practices might be disciplined, as well as to consider the issues raised by forced labor and Article XX(e)"; later expanding its purview to issues of investment and services, possibly including "extending the right of establishment to unions as service providers under international trade rules."¹⁰

Representatives from trade unions and other witnesses who appeared before the Committee nevertheless strongly held the view that the longer-term agenda must be to work towards the inclusion within the WTO framework of some broader, and enforceable, provision on labour/social rights rooted in the ILO core conventions. The Confederation of National Trade Unions argued that "the compulsory nature of the proposed clause is one of its major innovative aspects. However, it should be stressed that penalties would be used only after flagrant, persistent abuses were observed, and after WTO advice and proposals for technical assistance to correct the situation, with appreciable implementation deadlines, had failed to produce results." (*Evidence*, Meeting No 108, March 24, 1999, Montreal) The submissions from the ICHRDD and the CLC suggested that to get the issue on to the WTO agenda, some kind of "working group" be established on a joint basis with the ILO, to which all WTO Members belong, as we noted earlier. The CLC further recommended that "Canada urge the WTO to give observer status to the ILO at all levels, and that worker rights issues be made an integral part of all WTO trade policy reviews of member countries." (*Submission*, April 27, 1999, Toronto, p. 9)

In this view, given the reality of the WTO structures and onrushing negotiating processes, it is imperative that labour and social rights objectives be given voice within these, even as other systemic and institutional reforms are being sought to give the trade regime a more "human face", as the NUPGE brief put it. As CLC President Bob White indicated, there is no alternative to being "at the table", although one might like a different kind of table and different premises for reaching agreement than what presently prevails. The question then becomes: how to overcome the blockages which have stood in the way of the WTO taking significant steps forward. How much, realistically, should the WTO be expected to do? Robert Wolfe reminded the Committee at our first roundtable that "agreement will be most easily reached, and the WTO will be best placed to make a contribution, if the aim is accommodating the trading system to other international regimes, rather than asking the WTO to do all the heavy lifting on its own." (*Evidence*, Meeting No. 93, March 2, 1999) Jeffrey Schott made the strategic suggestion at the end of our hearings that to get past the rancor and developing country resistance since Singapore,

... the WTO should start with a discussion of the relevance of GATT provisions to labor issues – perhaps in a new WTO–ILO joint committee – and exclude the enforcement issue as a sign of good faith by the United States and others. The WTO–ILO committee could then be tasked with preparing a report on what can and should be done in the WTO to promote higher standards (that is, both carrots and sticks), and how WTO members can ensure that, in the words of President Clinton, "open trade lifts living conditions, and respects the core labor standards that are essential not only to workers rights, but to human rights everywhere." (Submission, May 12, 1999, Ottawa, p. 4)

¹⁰ Kimberly Ann Elliott, "International Labor Standards and Trade: What Should be Done?", in Schott (1998), p.p. 171–75.

Recommendation 39

The Government should work with other like-minded countries to promote closer cooperation between the WTO and ILO, including:

- building support for the June 1998 ILO *Declaration on Fundamental Principles and Rights at Work* through all appropriate means and forums;
- seeking improvements in the TPRM to address labour rights impacts; and
- seeking improved ILO representation in WTO processes along with utilization of its expertise and its advisory and technical assistance capabilities.

The WTO and Human Rights: From Alien to Ally?

Trade and investment agreements should neither supersede nor replace human rights agreements. However, the current generation of trade and investment agreements have a strong tendency to enhance the rights of the few over the rights of many, and to undermine and limit the ability of governments to implement even their existing human rights commitments. This is a situation which must first be recognized. Second, it must be understood. Third, it must be corrected. Perhaps the first step is to cease those actions which reinforce this tendency.

– Dr. John Foster, University of Saskatchewan College of Law,
Evidence, Meeting No. 127, April 30, 1999, Saskatoon

The Committee agrees that the larger question which is at stake is not one of whose "special interests" are served in any particular negotiation, but of what kind of global system do we want to leave to future generations? What kind of universal norms need to be recognized and inculcated throughout that system – including within the institutions and processes of economic regimes – so that the human rights and democratic values which Canadians clearly look for in their foreign policy will in fact be maintained and advanced? While the WTO is not, nor should it become, a human rights organization, its decisions increasingly impact on conditions for the observance of human rights at the domestic and international levels. Moreover, globalization means that our objectives as a country cannot be neatly separated into exclusive compartments which perpetuate outdated policy solitudes.

It is important, therefore, to begin the process of considering how Canada's international human rights obligations ought to be factored in to the

positions that Canada takes forward to trade and investment forums and the objectives that are pursued at negotiating tables. To that end, we appreciate the concerns which were registered by many witnesses, and the very thorough analysis of human rights issues related to trade prepared by the International Centre for Human Rights and Democratic Development. They made a cogent argument for giving an overarching primacy to the imperatives of international human rights law when considering all other international agreements, including those governing trade matters. They also focused on some specific areas which may require further attention – for example, the interpretation of the WTO's Agreements on Technical Barriers to Trade and on Government Procurement, where human rights-based policies on "ethical" purchasing and/or investment or similar standards within voluntary business "codes of conduct" (especially if supported by governments) might face trade challenges. The Committee agrees that there

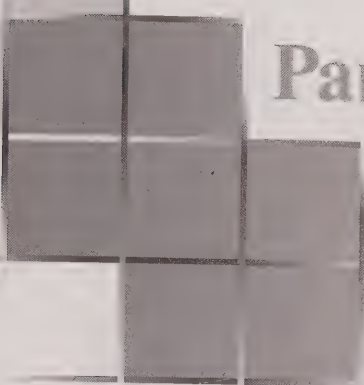
should be a careful examination in reviewing existing international trade and investment commitments, and before reaching any new agreements, it should be ensured that nothing in them puts in jeopardy the ability of governments and citizens to protect and promote human rights affirmed under international law.

Even more proactively, as was mentioned in Chapter 11, Bruce Porter (*Evidence*, Meeting No. 122, April 28, 1999, Toronto) suggested to the Committee that a fresh approach is needed which does not hive-off human rights concerns to the side or to narrow pieces of the trading system, but which provides a basis for a true integration of human rights sensitivity into the WTO's

"constitutional" framework and operating procedures. This is similar to the appeal of environmental groups for a mainstream emphasis on sustainable development principles and practices throughout the WTO system. Obviously there is a very long way to go in achieving that ideal. And the best possible WTO regime will not be able to solve many human rights problems. But at least governments like Canada's can begin now to chart a course which sees human rights obligations, not as alien or antagonistic to the freedom of trade and investment, but as an ally in working towards the kind of open world economy that truly serves the common good of Canadians and of people everywhere.

Recommendation 40

In reviewing existing international trade and investment commitments, and in preparing positions for future negotiations, the Government should assess human rights impacts on an ongoing basis, in particular seeking to ensure that nothing in them conflicts with Canada's international human rights obligations or with measures to protect and progressively realize rights which are affirmed under international law. Canada should also encourage other WTO Members to do the same.



Part Four

The WTO System at the Millennium: Towards Equitable Development and Good Global Governance

Chapter 14: Trade Liberalization, Development and Regionalism

Chapter 15: Trade, Finance and Global Stability—
In Search of a New “Bretton Woods”?

TRADE LIBERALIZATION, DEVELOPMENT AND REGIONALISM

“What Canadians are Saying”

There is growing recognition that the WTO agenda has to be broadened, in order to take into account the concerns of many developing countries. The outgoing WTO Director-General Renato Ruggiero has spoken of the need for a coherent and integrated strategy for development: ‘An ambitious integrated approach to technical assistance and debt relief – together with full market access in the advanced economies – should be a third pillar of a new effort in favour of least-developed countries in the trade field.’

Dr. Yuen Paul Woo, Asia Pacific Foundation of Canada
Monday, April 26, 1999 Vancouver

We need a balanced economic relationship. At the moment, we feel this balance has been destroyed. We’ve prioritized trade over everything else. The end result should be that the majority of the people in the hemisphere and in the world benefit.

Patricia Barrera, Common Frontiers
Tuesday, April 27, 1999 Toronto

...the government [should] examine carefully the real global record of trade and investment liberalization, because trade liberalization has contributed to an increasingly less fair distribution of the resources of our planet. Liberalized trade regimes have exploited labour, depressed wages, and contributed to poor living standards in developing countries.

Beverley Brown, National Anti-Poverty Organization
Monday, March 22, 1999 St. John’s

There is a limit, however, to what can be achieved through technical assistance and this boundary must be taken into account when discussing the scope and pace of a new Round of WTO negotiations. Besides an inability to take advantage of their new rights, many countries have not been able to implement their Uruguay Round commitments – falling behind in the drafting of new laws and policies, let alone their implementation and enforcement...The challenge [of a new Round] is magnified by the fact that many developing countries are also engaged in a process of domestic, sub-regional, and regional negotiations about trade liberalization or harmonization. Take a country like Jamaica. On top of its domestic reforms, it is involved in deepening and expanding Caricom, building the new Association of Caribbean States, seeking NAFTA parity in the U.S., and negotiating the Free Trade Area of the Americas and a post-Lomé agreement with the EU...

Ann Weston, North-South Institute
Thursday, March 18, 1999

In theory, the WTO is more democratic than the World Bank or the IMF in as much as each country has one vote, but in practice there are many limitations to effective participation. The negative consensus procedure at the WTO works against the participation of less-developed countries in that if they are unable to attend a meeting, they are assumed to be in agreement. Since many WTO meetings take place simultaneously, it is virtually impossible for poor countries to have delegates at each meeting. Poor countries also have difficulty making effective use of the dispute settlement procedure due to high legal costs and possible negative consequences of the cross-retaliation allowed by the WTO.

Betty Plewes, Canadian Council for International Cooperation
Thursday, March 18, 1999

In the world of deeper integration trade is not trade. No trade minister is responsible for services: indeed there is no minister of services. No trade ministry has the expertise necessary to deal with intellectual property or the environment or competition policy. 'Trade' policy today rests on an advanced and sophisticated governance and legal system, including effective coordinating mechanisms and access to technical expertise. As the World Bank notes in the 1998/99 World Development Report the knowledge gap between rich and poor countries is far greater than the income gap and, in the absence of change in both domestic and international policies, likely to widen. The knowledge gap – and the marginalization problem – cannot be tackled without upgrading the institutional infrastructure of the country – governance; education; legal system; [and] regulatory policies.

Professor Sylvia Ostry, Centre for International Studies, University of Toronto
Tuesday, April 27, 1999 Toronto

There will be a need to differentiate between the respective requirements of relatively advanced countries like Brazil, Korea and Mexico who, it can be argued, no longer need 'special and differential treatment' or developing country treatment, and reserve this for countries, particularly in Africa, who are at a lower level of economic maturity.

Gerald E. Shannon, Shannon and Associates
Tuesday, March 2, 1999

While it is true developing countries are choosing to join the WTO, many do so under duress. At present...there is no other game in town so they feel they must comply... I would like to see the WTO give priority to the Marrakech Agreements in which developing countries were promised special attention would be given to their concerns over market access and technology transfer.

Muriel Smith, United Nations Association of Canada
Monday, April 26, 1999 Winnipeg

In agriculture, liberalization would serve as a trade-off for areas where developing countries have less direct interests. Additionally, the interests of NGOs and developing countries need to be bridged. For instance, trade sanctions might be legitimated by WTO waivers for international environmental agreements with a broad base of multilateral support. A potential incentive-based tradeoff for developing countries could be to tie environmental commitments to commitments for new trade liberalization. On labour,

countries might consider negotiating a code on trade-related child labour, coupled with a program of educational development in developing countries assisted by developed countries.

Professor Gil Winham, Department of Political Science, Dalhousie University
Wednesday, March 24, 1999 Halifax

The protection of fledgling industries, although directly contrary to rules of trade liberalization, is also widely acknowledged to be a necessary step in the development of national economies and reduction of poverty. Great Britain, the U.S.A.A, Taiwan and Japan – in fact, most of the world's strongest economies – have gone through intensely protectionist phases in the development of their economies. Now that these countries' industries are looking for new markets in which to compete, they want to deny developing countries the right to institute the same protections.

Lori Latta Saskatchewan Council for International Cooperation
Friday, April 30, 1999 Saskatoon

Historically, Canada created its place on the world market through the use of public policy measures: customs rates, the Canadian Wheat Commission, subsidized electricity rates, protection of cultural industries, etc. This is exactly the type of strategic incentives that are being taken away from so-called developing countries by introducing measures for the liberalization of trade and investments, deregulation, etc., particularly with respect to protecting non-renewable resources. This asymmetry is not something of the past but something that is taking place here and now.

Professor Bonnie Campbell, Department of Political Science,
Université du Québec à Montréal, Thursday, March 25, 1999 Montreal

We need to ensure that regional agreements contribute to multilateralism, but we should not be diverted by them. Regional negotiations should be put on hold so as not to distract ministers, officials and the public. If we have influence on Washington, it should be used to help the President get fast track authority for the WTO. Many obstacles we now face in the U.S. market are ones we share with the rest of the world. Since so many of our exports to the U.S. end up in things they export to the rest of the world, open markets for them mean open markets for us. What we do not want is for the Americans to turn their back on the WTO, or to negotiate a series of deals that do not include us, or be so distracted by debates over the FTAA that the WTO suffers.

Professor Robert Wolfe, School of Policy Studies, Queen's University
Tuesday, March 2, 1999

Regionalism is a challenge for the WTO. Regionalism versus multilateralism is a challenge – how we incorporate regional agreements while at the same time ensuring that the WTO remains the primary, paramount international institution.

Lawrence Herman, Cassels, Brock, Blackwell
Tuesday, March 2, 1999

Trade Liberalization, Development and Regionalism

The WTO and Developing Countries

Many of the countries in the vanguard of calling for new negotiations are developing countries. Developing countries see the WTO as their house ... It is important that we now build on this new partnership to strengthen the cooperation between developed and developing countries. This will help consolidate multilateral cooperation and establish a solid basis for future challenges.

John Weekes, Ambassador of Canada
to the World Trade Organization,
Evidence, Meeting No. 133,
May 11, 1999, Ottawa.

Until the 1960s, GATT negotiating conferences were primarily concerned with issues of market access, especially tariffs. Development was not high on the priority list although it was one of the central goals of the GATT architects. Over the years and following very difficult discussions and negotiations, first in UNCTAD and subsequently in the GATT, developed countries agreed to provide tariff and trade concessions to assist economic development in the world's poorest countries. In 1964, a new Chapter on trade and development was added to the General Agreement, the Generalized System of Preferences was put in place, and a number of rules, provisions, and initiatives for developing countries were built into the system. These changes involved a major shift in approach and philosophy, and a move away from an earlier preoccupation with the concerns of developed countries. Since that time, the concerns of developing countries have been an integral part of the agenda in all subsequent GATT negotiations, including the Uruguay Round.

The WTO Committee on Trade and Development actively pursues issues of concern to developing countries. In 1998 the Committee addressed themes such as the application of the multilateral

trading agreements as they relate to developing members, follow-up to the High-level Meeting on the Least Developed Countries, technical cooperation and training, electronic commerce, trade facilitation, and regional trade agreements. The WTO held a High-Level Symposium on Trade and Development from March 17 to 18, 1999 which was chaired by former Director General Renato Ruggiero. Participants included senior officials from governments and international organizations as well as NGO representatives concerned with trade and development issues.

In his opening remarks to the symposium, Mr. Ruggiero suggested that the new global threat is hunger, poverty, ignorance, inequalities, unemployment, and the prospect of environmental collapse. He made the point that while development issues were not new to the WTO, in a sense, the dialogue about trade and development is very new. He cited three reasons behind this observation. First, because in our age of globalization, interdependence, and instantaneous communication, the level of inequality between countries and people is becoming more and more unacceptable. More than two billion people live on less than \$2 per day, 1.5 billion people lack access to fresh water, 130 million children have never gone to school. Second, the role of developing countries in the trading system has changed profoundly, as 80% of the WTO membership of 134 countries is classified as developing, and practically all new candidates for admission are either developing or transition economies. Third, developing countries are more and more important to the health of the world economy. In 1970, trade accounted for less than 20% of developing country GDP but today it is 38%. Between 1973–1997 the developing countries' share of manufactured imports into their markets tripled from 7.3% to 23%. Thus, development is no longer a challenge just for

developing countries; it should also be a priority for developed countries.

The implications for trade and development of globalization are apparent across a broad spectrum of economic activity. The current international financial crisis, the growing strength and leverage of business interests and international investors, the instability of world commodity prices, instant communication networks, technology transfers, and mobile capital are all impacting on the trading system and development goals. As indicated above, the WTO is now very much a global organization with many new players. Developing countries now account for a quarter of world trade, compared to less than a fifth 15 years ago. For the manufacturing sector, its share has doubled from 10 to 20 %. At the same time, some of the least developed and smaller developing countries are facing economic stagnation and poverty.

The Impact of the Uruguay Round on Developing Countries

The disciplines accepted by all WTO developing countries in the Uruguay Round increased significantly through tariff bindings, acceptance of all the multilateral trade agreements — including more intensified disciplines covering domestic policy measures such as subsidization — and new multilateral commitments in the areas of services and intellectual property rights. At the same time, provisions in various agreements granted differential and more favourable treatment (principally longer implementation periods) to developing countries and in some cases to countries in transition to a market economy.

As a result of the last round, developing countries, and in particular the least developed countries, face the challenge of organizing themselves to ensure that they can take advantage of the opportunities opened for them and develop the capacity to participate fully in the global economy. This process is continuing as a new round of negotiations is being prepared. Indeed, many countries in the developing world have not

been able to seize the trading opportunities opened by concessions and commitments from the Uruguay Round nor exercise their trading rights in export markets. And a number of countries still must fully implement their WTO obligations. The integration of technological assistance with capacity building and market access for developing countries was an important theme at the WTO symposium and will likely be an issue for consideration in the forthcoming negotiations.

Domestic protection is one of the main sources of distortion between domestic and international prices. This distortion causes countries to use their scarce resources less efficiently. Very high levels of protection, in particular, can seriously impair both export performance and domestic growth. There are still large differences amongst developing countries in the extent of liberalization undertaken and the levels of existing protection. For example, tariffs in South Asia, averaging around 45 % in the early 1990s remain very high. African countries, in general, have been more successful in reducing quantitative restrictions than tariffs, which are still in the 25–30 % range, showing little change from the second half of the 1980s. In contrast, average tariffs in East Asia (excluding China) are in the 10–20 % range and non-tariff measures have been cut back, although many such measures remain. Protection in Latin America has also been dramatically reduced, with average applied tariffs now in the 10–20 % range and few remaining non-tariff measures.

Many developing countries have applied MFN rates substantially below their bound levels. In the Uruguay Round, they sought “credit” for these lower rates, but there is little evidence that they received tariff cuts on exports of interest to them for such reductions. Undoubtedly, developing countries will be positioning themselves in the next round to realize their expectations in this regard. The higher bound levels often persist because individually their markets are small and their offer to bind the applied rates is a reciprocal concession of little interest to developed members. This is a weakness of the approach under which item-by-item bilateral negotiations

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initially take place, later applied on an MFN-basis. The absence of such bindings, however, leaves a degree of uncertainty about trade regimes which may be discouraging to foreign investment and hence technology transfer and development. Increased bindings of developing country tariffs may well become an objective in the new round.

A large number of developing countries however, find that they are poorly equipped in terms of institutional infrastructure and human and financial resources to meet the challenges posed by globalization and the international trading system. Indeed, many of them are continuing to experience difficulties in implementing the Uruguay Round Agreements. Moreover, specialization by LDCs and low-income countries in a narrow range of commodities has left them vulnerable to external shocks. A major effort is required to overcome these problems as well as to improve forms of information collection and management. Efforts to enhance export performance requires not only technical assistance aimed at strengthening the institutional infrastructure for trade and trade policy, but also initiatives aimed at helping the outward orientation of the private sector. Inadequate and inefficient road/rail/air transport facilities, storage facilities, and telecommunications have also limited the supply-side response of developing countries, with the problems being especially serious in the LDCs.

At the institutional level, many developing countries, lack a transparent legal and regulatory framework, including company and bankruptcy laws and investment codes. In most LDCs, the private sector is constrained not only by shortages of capital, but also of entrepreneurial, managerial, technical, and marketing skills. International organizations, as well as donor governments, are assisting developing countries and countries in transition to participate more actively in the international trading system and define and pursue their trade and development interests in the future WTO trade negotiations. Improved collaboration

and coordination among these organizations will play an important role in helping developing countries achieve their objectives.

The WTO Symposium on Trade and Development

In remarks to this recent high-level symposium, the former Secretary General of the WTO specifically identified three initiatives that should be pursued. First, improved market access through the provision of bound, free access for the export products of least developed countries by all advanced economies and – with a different timetable – by most dynamic developing countries. Second, promote capacity building through coupling the elimination of trade barriers with policies designed to reduce serious supply-side impediments from infrastructure and institution building to health care, education and social policy. In his view, the provision of budgets to support technical assistance should be an integral component of this initiative. Third, advanced economies should accompany free market access with an initiative to cancel foreign debt for as many of the least developed countries as possible. Mr. Ruggiero suggests that a creative approach to debt relief, together with full market access to the developed economies and capacity building, can provide the three pillars of a new strategy for bringing least developed countries into the mainstream of the multilateral trading system.

These views were echoed by many speakers at the recent symposium. The Secretary General of UNCTAD called for the new round to address the unfinished business from the Tokyo and Uruguay Rounds. This includes tariff peaks and tariff escalation in food, textiles and clothing; liberalization of trade in agriculture; abuse of antidumping procedures; problems with rules of origin; and technical standards and environmental barriers. He also called for re-invigorated special and differential treatment and better technical cooperation. Fred Bergsten, Director of the Washington based Institute of International Economics, identified the following as priority

areas for developing countries in the new round: increased market access for textiles and agricultural goods; elimination of preferential tariffs in regional agreements (one speaker suggested that there should be a sunset clause so that such preferences are eliminated after five years); new agreements on foreign direct investment; tougher discipline on the use of anti-dumping remedies; liberalization of the movement of natural persons; and further strengthening of the dispute settlement system. Many speakers mentioned that priority should be given to the extension of bound duty free access for all LDC products in the markets of developed countries.

While these issues were also referred to by a number of speakers, other contributors at the symposium stressed that trade alone cannot form the basis for lasting development, and advances on the trade front must be part of a broader development framework agenda covering macroeconomic, sectoral, and social policies including debt relief, development of human resources, and technical assistance. The European Union said that the best way for developing countries to prevent unilateralism and protectionism and ensure integration into the multilateral trading system would be to enter into the new round, in which it was prepared to put all of its current tariffs on the table. Some countries argued that the agenda for the new round was unbalanced in the sense that the areas of interest for developed countries were on it, while those of developing countries were not. Others (India, Zimbabwe, Bangladesh) highlighted the limited capacity of the least developed countries (LDCs) to take on new commitments as the WTO agenda was already overloaded.

While the average level of tariff protection in the industrial countries is relatively low, there are still serious barriers to entry in certain sectors of particular interest to developing countries — including agriculture, textiles, clothing, and fish and fish products. As indicated above, developing countries have also expressed concern about

preference erosion, tariff escalation, and the risks of being left out of the proliferating free trade areas and customs unions. Clearly, developing countries which are WTO Members will continue to benefit from the improved terms and security of access and the new rules and disciplines agreed to in the Uruguay Round, as well as from the transparency and predictability of their own trade regimes. Nonetheless, launching a new round will provide an opportunity for the developing world to seize the initiative to improve their relative position in the trading system and ensure that the WTO is truly global, reflecting the community of interest of all its Members as it prepares for the forthcoming round of negotiations. Developing countries can be expected to put forward a series of proposals or requests in the new round, all of which will be designed to promote their development objectives. As a group they now constitute a formidable bloc within the WTO and the next round will clearly need to focus on non-Quad initiatives or at least attempt to attain a Quad-LDC balance in the agenda. LDC aspirations and views will need to be fully taken into account in elaborating the agenda for the new round and in any new agreements.

Regionalism and Multilateralism

The WTO Agreements are Canada's main trade agreement with the rest of the world. Generally, its rules govern most trade relations with our trading partners. We are also a party to the FTA, NAFTA, bilateral free trade agreements with Chile and Israel, and are involved in active discussions about freer trade with the FTAA, EFTA and APEC countries. Canada, of course, is not the only country engaged in and actively pursuing regional trade arrangements. Regionalism is now a major force within the international trading system and may expand as more developing and transition economies continue to integrate into it. Regionalism is not a new phenomenon within the GATT. Indeed, preferential tariff arrangements have been part of the trading system for many years, examples: the Commonwealth preferential tariff system, and the

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European Common Market (Union). In recent years, however, regionalism has been growing. In addition to the groupings referred to above, Mercosur in Latin America and South African Development Cooperation Conference (SADCC) in Africa have also been established. Even though a large number of developing countries are seeking to join the WTO, more and more countries seem to be gravitating toward membership in regional blocs.

The implications of regional trade arrangements for the multilateral system and future rounds of WTO negotiations are significant. Put simply, the impact of regional free trade areas or common markets is to provide reduced tariffs between countries and their industries that are parties to the arrangement while maintaining higher tariffs (MFN rates) or other trade barriers against imports from countries that are not members. Some argue that any trade liberalization, even within small groups of countries i.e. NAFTA, is a good thing and can lead to multilateral liberalization by helping member countries adjust to freer trade conditions before they become a reality in a multilateral system. Further, some smaller countries seek these arrangements with larger countries as a type of insurance to protect their access to the market of the larger country. Others claim that once established, stakeholders in the regional groupings exert internal influences to maintain and protect their new and larger markets from outside forces and thereby defeat the movement toward multilateral freer trade. Moreover, it has been suggested that for negotiations purposes, especially within the WTO, there is a danger that these regional groups may wish to act as a common unit and speak with a single voice. This could be a problem if the participants in the regional group have difficulty in reaching a common position or, if one is agreed, the decision becomes intractable, thus making consensus much more difficult to achieve in the broader WTO forum. At the same time, a multiplicity of regional arrangements together

with new WTO agreements may take implementation difficulties even more acute for some developing countries than they are at present.

There is no agreement as to whether regionalism contributes to or works against multilateral freer trade. However, there are concerns about its longer term effects for the multilateral system. The subject was raised before the Committee mainly within the context of the hemispheric process of negotiations towards a proposed Free Trade Areas of the Americas (FTAA) by the year 2005. In addition to the testimony received on FTAA related matters during the Committee's cross-country consultations this spring, additional hearings are being conducted by our Sub-Committee on International Trade, Trade Disputes and Investment. Canadian interests in the FTAA process will be dealt with at length in the Sub-Committee's Report later this year. The Committee has been alerted to the problems associated with these arrangements for the WTO, some of which may come to the fore in the next round. In this connection, the linkages between the multilateral and regional processes and between developing and developed countries for a new round are very real and must be taken into account by the Government in its preparations for the Seattle meetings¹.

Since its inception, the multilateral system has worked well for Canada. Given the growth and current attractions of regionalism, the Committee is concerned that the multilateral process might get sidetracked if adequate care is not exercised to protect it. In this context, it is particularly important that the whole issue of regionalism be viewed from the perspective of the developing world. Power is still a major element in international trade negotiations and it may well be that many of the developing countries will also wish to negotiate jointly as a means to achieve their objectives. The major current regional blocs are the EU and NAFTA and the prospect is that

¹ For a useful review of these see, L. Allan Winter, "Regionalism and the Next Round", in Jeffrey Schott, ed, *Launching New Global Trade Talks* (1998) pp. 47-60.

these will expand further. As Sylvia Ostry has suggested, it is easy to imagine the use of tactics whereby the major powers gradually build up coalitions for their own policies before taking issues to a multilateral round.² The coming together of groups within the WTO was recently demonstrated through the difficulties associated with choosing a new Director General. A proliferation of this kind of approach to problem solving and liberalization efforts within the WTO could undermine the longer term viability of the organization.

Witness Views

Development and global equity issues were addressed by a number of witnesses in all parts of the country. Betty Plewes of the Canadian Council for International Cooperation made a strong argument for undertaking a full assessment of the impact of the Uruguay Round on poverty, inequality, environment, human rights, and labour standards prior to embarking on a new round of negotiations. Efforts to democratize the WTO should extend to WTO rules of operation in order that they explicitly include full and meaningful participation by developing countries.

On the same panel, Ann Weston of the North South Institute recommended that: (a) Canada extend duty free treatment to all imports from the least developed countries and bind this commitment in the WTO; (b) a priority for Canada should be to increase technical assistance for developing countries through the WTO; (c) existing and proposed WTO rules should respect developing countries' needs for a range of approaches to economic and social development; and (d) Canada should support measures that complement WTO rules aimed at reducing financial instability and strengthening international labour rights. More specifically she urged that Canada implement its Uruguay Round commitments, including phasing out textile and clothing quotas, limit any subsidies that affect developing country trade, and reform the General

Preferential Tariff to include key items of interest to developing countries at zero tariffs. (*Evidence*, Meeting No. 102, March 18, 1999). Betty Plewes and Ann Weston both cited U.K. Overseas Development Minister Clare Short's call for a "Development Round".

Submissions from development NGOs, notably Oxfam Canada, also emphasized food security and sustainable development issues. These witnesses also told the Committee that Canada needs to promote global human rights issues, and trade obligations should not contravene the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. (*Evidence*, Meeting No. 102, March 18, 1999) Other witnesses were concerned that developing countries have both the capacity to make their own democratic choices, and to live up to their international commitments and obligations. Muriel Smith of the United Nations Association of Canada stated that "while it is true developing countries are choosing to join the WTO, many do so under duress. At present ... there is no other game in town so they feel they must comply ... I would like to see the WTO give priority to the Marrakech Agreements in which developing countries were promised special attention would be given to their concerns over market access and technology transfer." (*Evidence*, Meeting No. 119, April 26, 1999, Winnipeg)

Aaron Cosbey and Dr. Arthur Hanson of International Institute for Sustainable Development, recommended that Canada seek a WTO negotiation in which the well being of people is front and center and in which sustainable development is mainstreamed within the multilateral trading system. They noted that trade and development can be mutually supportive and Canada has an opportunity to help bridge the gap between powerful and poor nations by brokering agreements which respect the environment and trade and development objectives. (*Evidence*, Meeting No. 119, April 26, 1999, Winnipeg)

² S. Ostry, Presentation to the First Academic Colloquium of the Americas, Costa Rica, 1998.

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CLC President Bob White, also expressed strong labour support for resources to be made available to developing countries to allow them to participate more equally in the WTO.

Gerald Shannon observed that the next round needs to differentiate between the treatment to be given the more advanced developing countries, such as Brazil and Mexico, and those that are less fortunate. (*Evidence*, Meeting No. 93, March 2, 1999) Peter Clark, of Grey, Clark, Shih and Associates noted that one of the problems with the WTO system is that it favours developed countries over developing countries and the costs associated with membership in the WTO are too burdensome for smaller countries. (*Evidence*, Meeting No. 95, March 4, 1999) Professor

Winham of Dalhousie University suggested to the Committee in Halifax that WTO Member countries should be concerned about the disproportionality of the agenda for the new round, which seems to be mainly concerned with the priorities of the developed countries.

(*Evidence*, Meeting No. 107, March 24, 1999, Halifax) In Toronto, Dr. Sylvia Ostry pointed out that the LDCs do not have the resources, capabilities, legal system, or technical assets to fully implement the Uruguay Round. As such, there is a risk that some of these countries will be increasingly marginalized and some LDCs are questioning the need for a new round at this time. (*Evidence*, Meeting No 122, April 27, 1999, Toronto)

Recommendation 41

The Government should support the launching of a new round of negotiations which fully includes developing countries with a view to promoting an open, stable, world economy that will facilitate expanded world trade and sustainable development on an equitable basis.

Recommendation 42

A number of specific issues of concern to developing countries for the forthcoming negotiating round were identified both by witnesses and in the recent WTO symposium. Bound duty-free treatment for the export products of the least developed countries received particular attention. All of these proposals require very careful study and review by the Government prior to the Seattle meeting and through the course of negotiations. The results of these studies should be examined jointly with interested domestic stakeholders in formulating Canadian policy positions vis-à-vis developing countries for the new round.

Recommendation 43

The Government should, both in the lead-up to the Seattle meetings and throughout the resulting negotiations, adopt positions that ensure the compatibility of regional trading arrangements with the WTO.

TRADE, FINANCE AND GLOBAL STABILITY – IN SEARCH OF A NEW “BRETTON WOODS”?

“What Canadians are Saying”

Providing global governance is no longer good enough, however, if it is not transparent, if people cannot see it going on, and if it is not done under democratic control. These objectives require agreements in Geneva that allow scope for policy choice at home. They also require active public consultation on global issues.

Professor Robert Wolfe, School of Policy Studies, Queen's University
Tuesday, March 2, 1999

Public discourse on global governance issues is perceived to be dominated by transnational corporations, officials of national governments and faceless international agencies. Accompanying this growing governance agenda, there exists also a global 'democratic deficit'

Simon Rosenblum World Federalists of Canada
Tuesday, April 27, 1999 Toronto

Democracy must be the cornerstone of any future trade agreement. Nation states must be allowed to respond to the values, cultures, needs and desires of its citizenry as well as protecting the environment for future generations. The rights of the individual and sovereign nations must always come ahead of corporate interests.

Karen Cooling and Julie Carew, Confederation of Canadian Unions, BC Council
Monday, April 26, 1999 Vancouver

It's important to remember that the WTO is but one key instrument in the emerging architecture of global governance and global economic management. This wider picture must guide the committee as it makes recommendations for Canadian priorities for the WTO agenda in the coming year. Other key institutions include the United Nations and other Bretton Woods institutions; the ILO conventions; the Universal Declaration on Human Rights; the Rio Declaration on Environment and Development; the Beijing Declaration on Women; and the Copenhagen Declaration on Social Development. There are many others as well, yet it is the WTO alone that has been given the power of enforcement, able to prevail over agreements, to strike down national laws protecting the environment and social rights, and to set the patterns of international interaction. It is as if the WTO has become a powerful 'fifth wheel' of the multilateral system, working apart from the historic United Nations framework and distorting its path, which is rooted in humanitarian values.

Betty Plewes, Canadian Council for International Cooperation
Thursday, March 18, 1999

We should be seeking trade policies in the WTO that are coherent with our aid policies and reduce global poverty.

Ann Weston, North-South Institute
Thursday, March 18, 1999

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...the post-war Bretton Woods system sought to avoid the financial crisis of the twenties and the economic depression that followed through a measured opening of trade combined with tight controls on private financial flows. The goal of the system was not to maximize the flow of trade, per se, and certainly not capital flows, but rather it was a means to maximize international economic stability and national prosperity. The current agenda is driven by the notion that maximizing trade and capital flows is the goal, and it is taken for granted that national prosperity will follow. The current decade has, or at least should have, put to rest any claim to the validity of this thinking. You may be aware that the G-7 has just set up its financial stability forum to strengthen supervision and surveillance. This exclusive club is chaired by the head of the BIS, the world central bankers' club, and has representatives from the G-7 central banks as well as the finance ministries—not from the foreign affairs or trade ministries. It also has representation from the IMF and the World Bank and the OECD, but none from the WTO. Participation from emerging market countries is by invitation only.

Bruce Campbell, Canadian Centre for Policy Alternatives
Thursday, March 18, 1999

Globalization and liberalization have great merits explains Lamberto Dini, a former executive director of the IMF. He was speaking to the United Nations. He went on to say, "...but a global market requires some measure of global government built on the knowledge that the wealth of single states cannot be separated from the welfare of the international community and a government whose strength rests on the democracy of institutions."

John J. McConnell
Friday, April 30, 1999 Saskatoon

The recent and still deepening global economic crisis [in East Asia] has underlined the importance of maintaining national controls on both inward and outward flows of 'hot money.'

Robert White, Canadian Labour Congress
Tuesday, April 27, 1999 Toronto

Negotiations for the improvement of trade and financial relations should be conducted in United Nations forums and subject to UN protocols such as conventions on human and societal rights, environment and labour. Canada should promote international regulatory instruments like the Tobin tax to secure responsibility of private actors.

Tim Quigley, Council of Canadians, Saskatchewan Chapter
Friday, April 30, 1999 Saskatoon

Trade, Finance and Global Stability – In Search of a New “Bretton Woods”?

A half century ago, the statesmen who designed the postwar system – the United Nations, the Bretton Woods system, the GATT – were deeply influenced by the shared “lessons” of history, even if their politics or outlooks differed. All had lived through the economic chaos of the 1930s – when turning inwards had led directly to the breakdown of international trade, the Great Depression, and ultimately to world war. All – including the defeated powers – were agreed that the only route to reconstruction and peace lay with building an entirely new architecture – one rooted in the values of freedom, openness, and interdependence.

The end of the Cold War produced no similar demand for a new international system. On the contrary, the triumph over Soviet communism tended to reinforce the status quo. It encouraged the belief that we had reached the “end” of our policy debates – if not the end of history. And that foreign policy could be forgotten in the face of more pressing domestic concerns. The result is a certain sense of paralysis in the face of the many challenges of globalization – a consciousness of the enormous tasks confronting us, and yet an inability so far to marshal the collective vision and leadership to move forward.

Today we face a new reality. If the challenge of the past fifty years was to manage a divided world, the challenge of the future is to manage an interdependent world – and our institutional and mental landscapes must change. Events of the past year, and especially of the past few months, clearly illustrate that the status quo is no longer good enough. That in this increasingly globalized and borderless global economy – where trade, technology, and information move ever-more instantly and effortlessly across the planet – we cannot rely on our old policy tools and our old approaches. Events are passing us by. Today we need to respond to the challenges before us with the same vision and imagination that inspired the architects of the post-war system over fifty years ago.

Former WTO Director General Renato Ruggiero,
“Beyond the Financial Crisis,” Address to the Council on
Foreign Relations, New York,
October 5, 1998

Trade Liberalization, Financial Stability, and the Public Good

Four years ago, in advance of the G-7 Summit being hosted by Canada in Halifax, the Committee tabled an important Report which made the case for a series of reforms to the Bretton Woods twins, the International Monetary Fund (IMF) and the World Bank, and to the international financial system as a whole.¹ At the time, we also took note

of the creation of the WTO a few months earlier, and expressed the hope that it might evolve into the third pillar which would finally complete the vision of a liberal global economic order that motivated the prime movers (among them John Maynard Keynes) of the 1944 Bretton Woods conference and laid the foundation of postwar reconstruction and development.

¹ *From Bretton Woods to Halifax and Beyond: Towards a 21st Summit for the 21st Century Challenge*, Report of the House of Commons Standing Committee on Foreign Affairs and International Trade on the Issues of International Financial Institutions Reforms for the Agenda of the June 1995 G-7 Halifax Summit, Ottawa, May 1995.

The concerns raised at mid-decade by the aftershocks from the Mexican peso crisis now seem to pale by comparison with the hindsight of the Asian financial meltdown, remarkable for its unexpected rapidity and scale, and its continuing contagion effects on volatile emerging markets from Russia to our own hemisphere. There are many different factors in play in these varied circumstances; however, the cumulative impact has been to destabilize currencies, deflate commodity prices, unsettle financial markets, shake investor confidence, and retard global growth prospects. It has also refocused renewed attention by political leaders – especially those who will gather for the G-8 Cologne Summit this June – on many of the issues of international financial surveillance, institutional reform, systemic stabilization, improved multilateral governance and democratic oversight, on which we have the impression of being ahead of our time in the measures we called for in our 1995 Report.

The evidence is clear that the increasing and deepening integration of markets globally, combined with the speed of financial flows which now dwarf total trade transactions, pose new challenges for policymakers, as was pointed out by witnesses from across the country (for example, in Halifax, Gilbert Winham of Dalhousie University; in Ottawa, Bruce Campbell of the Canadian Centre for Policy Alternatives; in Toronto, Sylvia Ostry of the University of Toronto's Centre for International Studies; in Saskatoon, Malcom Matheson of the Canadian Union Of Public Employees; in Vancouver, Michael Hart of the Centre for Trade Policy and Law). The latest figures released from the Swiss-based Bank for International Settlements (BIS) on 10 May 1999, report the *daily* volume of foreign-exchange transactions having risen to U.S.\$ 1.5 *trillion*. About U.S.\$ 60 billion worth of Canadian dollars – equivalent to nearly one-tenth of Canada's annual national economic output – are traded every day. The vast majority of all these transactions, perhaps 95% or more, are

of a speculative nature rather than to finance international exchange necessary for trade and long-term productive investment.

Moreover, we are witnessing how a crisis or financial panic in one area can quickly spill over into another. As noted in this Report's introduction, while Europe and North America seem to be weathering the storm well, the WTO's 1998 Annual Report blames the Asian slowdown for cutting world trade growth in half from the previous year and forecasts this hangover to last through 1999. Beyond the negative effects on global economic growth, the social costs are also unacceptably high. Indeed in calling for a "fundamental rethinking of global economic management by the WTO and the International Financial Institutions (IFIs)", the submission of the Canadian Council for International Cooperation pointedly observed:

Recently, during a civil society and parliamentary mission to Southeast Asia organized by the CCIC [note: in which several members of the Committee participated], we saw first hand how countries that had been heralded as success stories in development over the last 30 years are now facing a tragedy of staggering proportions. Massive unemployment, worsening health care, urban strife, and environmental degradation are the local manifestations of the Asian crisis which in turn has triggered other crises around the world. These countries were once prime examples of the liberalized trading and financial system promoted by the WTO and the international financial institutions – they had done things "correctly", opening their markets, privatizing services, and emphasizing trade. Yet many economists now realize that rapid, unregulated financial liberalization was itself one of the main causes of the Asian collapse. ... The Asian crisis illustrates the profound failure of

*international institutions to protect and support human development.*²

Supporters of continued liberalization of trade – including in financial services under the terms of the WTO Agreement on Financial Services which took effect earlier this year – acknowledge that: “Financial instability and debt raise the question of whether further liberalization is the correct action to take in the world economy at this time.” (*Evidence*, Gilbert Winham, Meeting No. 107, Halifax, March 24, 1999) Yet they argue that an open trading regime that provides access to foreign markets and foreign exchange earnings is especially vital to countries in times of economic distress. Jeffrey Schott of the Washington-based Institute for International Economics raised the response to the global financial crisis as his first reason for favouring a Millennium Round, telling the Committee that: “WTO negotiations are needed to promote medium-term growth prospects in emerging markets and to forestall a protectionist backlash in the United States and Europe against increased imports from those countries.” (*Evidence*, Meeting No. 135, May 12, 1999) Institute Director C. Fred Bergsten has argued that international monetary and macro-economic conditions – in particular, leading to huge American trade deficits and an overvalued U.S. dollar – have been a central factor in launching every major modern multilateral trade negotiation. “The logic behind this linkage is clear: the onset of large trade imbalances, though driven primarily by macroeconomic forces, leads to strong political

pressures for protectionism that can only be resisted by renewing the momentum for trade liberalization.”³

Proponents of financial services liberalization have portrayed it as positive evidence of a resolve to reform and strengthen financial sectors on an open non-discriminatory multilateral basis, withstanding the protectionist pressures arising from many countries’ financial difficulties. Rules-based liberalization, WTO studies argue, can proceed in a way that creates security and predictability in the marketplace, though they acknowledge that without a strong policy and regulatory framework undergirding a stable macro-economic environment, “liberalization can perpetuate problems in the financial sector of the economy”.⁴

This kind of financial-sector services liberalization is properly distinguished from the wider systemic issues of managing short-term capital and currency movements, about which there has been vigorous debate in recent months over proposals, including from Canada’s Minister of Finance, for redesigning the international financial “architecture”.⁵ Nonetheless, the WTO is very much implicated in the larger issue that is at stake of how to fashion a virtuous circle of financial stabilization and forward momentum for trade liberalization. Or as former WTO Director General Ruggiero has put it: “There can be no solution to global financial instability unless we keep world markets open and the multilateral system strong. Yet, at the same time, our ability to maintain an open world economy will depend on

² “Bringing the WTO Back to International Humanitarian Values”, Ottawa, 18 March, 2–3. See also the Report of the *in common* Canadian Civil Society and Parliamentary Mission to South East Asia, 1–14 September 1998, *Asian Meltdown, Human Crisis: Global Lessons for Sustainable Recovery*.

³ Bergsten, “The International Monetary Scene and the Next WTO Negotiations”, in Schott, *Launching New Global Trade Talks* (1998), 39–46.

⁴ Masamichi Kono, Patrick Low, and Mukela Luanga, *Opening Markets in Financial Services and the Role of the GATS*, World Trade Organization Special Studies, Geneva, 1997, 35.

⁵ For some useful surveys and critical assessments see Barry Eichengreen, *Towards a New International Financial Architecture: A Practical Post-Asia Agenda*, Institute for International Economics, Washington D.C., February 1999; Jan Teunissen, ed., *Regulatory and Supervisory Challenges in a New Era of Global Finance*, The Hague, FONDAD, 1998; “Global Finance: Time for a Redesign?”, *The Economist*, 30 January 1999, Survey, 3–18.

our ability to increase stability.”⁶ The Asian crisis and its aftermath, by exposing gaps in domestic regulatory frameworks and in the international governance of markets, could provide an opportunity to strengthen the overall structure for an integrated trade and financial system – to complete the design begun at Bretton Woods over 50 years ago – in order to prevent future crises, or at least to reduce their scope and severity.

But what should be the premises of this new global economic governance system? There are many who have doubts that the prevailing fashion of global market-driven liberalization across the board (the so-called “Washington consensus”) is leading down a path to good, or sustainable, economic management. That includes strong supporters of an open world economy who see the merit of taking collective measures now to stabilize and reform global finance. Bruce Campbell cited for the Committee the strong views of prominent Columbia University trade economist Jagdish Bhagwati to the effect that “the merchants of free capital mobility have ‘hijacked the ideology of free trade’”.⁷ Harvard University economist Dani Rodrik, whose latest book *The New Global Economy: Making Openness Work* was cited by the North–South Institute’s submission, has written that: “As long as capital flows remain large relative to liquid assets held by national governments and are easily reversible, the international economy will be hostage to spectacular boom and bust cycles. Indeed by

focussing attention on internal structural reforms in the developing world, the current approach leads to complacency on short-term capital flows, and could increase rather than reduce systemic risks.”⁸ Witnesses such as the Canadian Labour Congress argued that the actual development experience of countries must be taken into account in determining appropriate capital market regulation and any multilateralization of investment rules. (*Submission*, Toronto, April 27, 1999, p.5–6)

The criticisms may be having some effect as the IMF now seems to be taking a more cautious approach to capital account liberalization.⁹ Surveying some of the wreckage from the record of the IFIs’ policy prescriptions, Rodrik argues that national policy heterodoxy guided by democratic judgements would probably have produced better results in societal terms. It is not only critics who are searching for approaches which better serve the public good. World Bank President James Wolfensohn has been stirring things up in Washington and other capitals with provocative calls for radical and comprehensive change, telling a recent Trilateral Commission gathering that: “The sense of warning is valid. At the level of people, the system is not working.”¹⁰ Ann Weston of the North–South Institute put it to the Committee that: “If developing country governments – and especially their citizens – are to remain confident in the economic merits of an outward orientation, and thus to stay engaged in

⁶ Ruggiero, “Moving Towards Global Stability”, Address to the Institute of International Bankers, New York, 11 January 1999.

⁷ Campbell, Ottawa testimony of 18 March 1999, Meeting No. 102–1010; quoting from Jagdish Bhagwati, “The Capital Myth: The Difference between Trade in Widgets and Dollars”, *Foreign Affairs*, May/June 1998.

⁸ Rodrik, “Governing the Global Economy: Does One Architectural Style Fit All?”, Paper prepared for the Brookings Institution Trade Policy Forum on Governing in a Global Economy, Washington D.C., 15–16 April 1999, 3.

⁹ See, for example, a recent article in *Finance & Development* by Manuel Guitian, former Director of the IMF’s Monetary and Exchange Affairs Department, (“Economic Policy Implications of Global Financial Flows”, March 1999, 26–9), which acknowledges that the “orderly liberalization of capital flows” needs to address “the development of norms and procedures that all countries agree upon and that are flexible enough to cover all potential country situations”, including in this regard: “a provision to allow countries a measure of flexibility [in how they liberalize]...according to their individual circumstances; a set of common prudential norms...; a principle of temporary acceptance of restrictive measures ... when these are necessary for balance of payments or macroeconomic management reasons; and a provision to allow countries to resort temporarily to controls in emergency situations.”

¹⁰ Quoted in Jim Hoagland, “Is the Global Economy Widening the Income Gap?”, *The Washington Post*, 27 April 1999.

the WTO, let alone embark on new negotiations, there must be parallel efforts to reform and strengthen the rest of the global architecture”, a process in which “Canada should lay a leading role”. (*Submission*, March 18, 1999)

Other witnesses before the Committee who addressed these issues called for fundamental reforms to the “structural adjustment” policies which have been imposed on many debt-budened developing countries in particular. They also wanted to see stronger actions by leading industrialized countries like Canada to offer substantial debt relief with appropriate conditions, and to work within the G7/8 context and with other like-minded countries to promote ideas, not only for the better supervision of international

capital movements, but also for their moderation through measures such as the so-called “Tobin tax”, named after the Nobel prize-winning economist James Tobin who first suggested this approach to curbing excessive and damaging foreign-exchange turbulence in the 1970s. The Committee discussed the concept in its 1995 Report cited earlier, and the debate has since resumed with renewed interest. Some witnesses referred positively to the discussion in Parliament around a motion passed at the end of March calling on the government to consider enacting “a tax on financial transactions in concert with the international community”.¹¹ Proponents of the initiative have pointed out that an additional benefit could be to raise significant sums for global sustainable human development purposes.

Towards a Coherence of the WTO within a New Global Governance Architecture

First, we must move towards a more collective leadership – one that reflects the reality of a multipolar world, and especially the emergence of new developing-country powers. ...

Second we need to look at the policy challenges we face as pieces of an interconnected puzzle. We can no longer treat human rights, the environment, development, trade, health, or finance as separate sectoral issues, to be addressed through separate policies and institutions....

Third, we need a new forum for the management of these complex issues: One that is truly representative of global realities. ... The Millennium Summit, recently decided upon by the General Assembly of the United Nations, could be the appropriate occasion to improve the global architecture we need for managing globalization.

Last but not least, we need a clear mandate from the world's leaders to promote a common global strategy and common global actions. A common strategy – among international institutions, national administrations, civil society – for strengthening the international rule of law, eradicating poverty and reducing world-wide inequities within a set period of time. A common strategy to achieve a sustainable environment – in developing and developed countries alike. A common strategy to eliminate the greatest part of global trade barriers – at least by reflecting on a multilateral level, what governments have already agreed in regional arrangements. This strategy must be focused on people and values – more than governments – harnessing interdependence and globalization to address today's challenges. An annual report to the world's leaders should indicate the progress we have made towards meeting these common goals.

¹¹ The motion, M-239, was passed in the House of Commons on 23 March 1999 by a vote of 164 to 83, and received support from all parties, including from Finance Minister Paul Martin.

The choice we face is certainly not between this new global system and national sovereignty. On the contrary, greater global cooperation, strong international organizations, and consensus-based multilateral rules only extend sovereignty beyond borders. In today's interdependent world it is only by remaining isolated – by turning away from international cooperation – that countries surrender their sovereignty.

Former WTO Director-General Renato Ruggiero, "Beyond the Multilateral Trading System", Address to the Institut pour les hautes études internationales, Geneva, 12 April 1999

What is the place of an evolving WTO system within a coherent structure of global institutions capable of meeting the governance challenges of the new millennium?

Since Bretton Woods, the building of a liberal international trading regime has been closely allied with an orderly payments system based on convertible currencies, supported and watched over by the Washington-based international financial institutions (IFIs). Even though the ITO failed, GATT indeed played an important role in lowering barriers, keeping markets open, and assisting the integration of Germany, Japan, and a growing number of developing countries into the international economy. GATT rules also recognized that in the special circumstances of countries encountering severe balance-of-payments problems, temporary trade restrictions might be legitimate. Following the period of wartime reconstruction, these exceptions have been primarily invoked by developing countries. However, it has been misalignments in the current-account balance of the world's economy, that of the United States, that have had the greatest systemic impact. Indeed when the Nixon administration imposed a unilateral surcharge on imports in the early 1970s, it provoked a GATT crisis and fatally undermined the Bretton Woods system of fixed exchange rates.

Since that time, as Sylvia Ostry's seminal submission observed, the agencies of international economic management have been attempting to glue various of the pieces of Bretton Woods back

together, and increasingly poaching on each others' territories, while talking a lot about the need for "coherence". Of course almost everyone agrees in principle that better coordination among the GATT/WTO, the IMF and the World Bank, based on greater coherence in the design and application of economic policy reform measures, would be desirable. An October 1998 *Joint Statement* by the heads of these three leading international economic organizations solemnly pronounced that "pursuit of policies facilitating a return to more orderly financial markets and exchange rate stability are the immediate requirements for recovery." Ostry recalls that at

the conclusion of the Uruguay Round, the FOGS group on systemic reform had come up with a "largely rhetorical" *Ministerial Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking*. However, as she so astutely analyzes, there has been little progress in practice in overcoming the "coherence deficit", even though the viability and sustainability of both domestic reform and liberalization processes increasingly requires it. She suggests that the accession framework for China leading into a new WTO round could provide a key testing ground for moving forward in a truly coordinated way.¹²

As was impressed upon the Committee by many witnesses, the realities of market integration combined with public questioning of globalization are leading to a search for new modalities of multilateral cooperation and new political-economic strategies that incorporate sustainability, equity, and good governance

¹² "Future of the WTO", Paper for the Brookings Trade Policy Forum and presented to the Committee in Toronto, 27 April 1999, 22ff.

norms.¹³ The push for convergence is happening in virtually every domain of commercial activity. For example: “All of the international fora dealing with liberalization and regulation of financial services are in the process of adapting or expanding their roles to deal with the challenges associated with the globalization of financial activity and new policy needs. ... There is considerable scope for developing creative interaction among the various fora [WTO, IMF, World Bank, BIS, etc.] to produce greater policy coherence, short of cross-conditionality. At a minimum, they should reinforce and facilitate each other’s work”.¹⁴

In an overall global economic governance sense, the challenge ahead is to complete the postwar foundation that was left unfinished, finally achieving an integrated multilateral economic regime that is fully cognizant of and coherent with the universal goals of human security, human rights, and sustainable human development. Such a project may appear unrealistic at the moment, but as one scholar of international economic law put it in reflecting on the partial achievements of the GATT/WTO’s first half century – “really it is only an updated version of John Maynard Keynes’ vision for government of the system of international economic relations after the Second World War. At that stage, a less ambitious compromise was imposed at the Bretton Woods Conference by the United States and matters went on as we have seen in the past 50 years: cooperation endlessly divided, variable geometries, duplications and conflicts of competencies, and the absence of a unifying plan.”¹⁵

In the post–Cold War era, as the WTO becomes a more universal organization and as it responds to

the challenges of globalization as outlined by its first Director General, the issues of how best it can work with other global institutions, in particular those of the United Nations system, have also become more pressing. In the Committee’s first roundtable, Robert Wolfe referred to UN Secretary General Kofi Annan’s address to this year’s World Economic Forum in Davos, Switzerland, concluding that: “The trading system can and must balance social and economic objectives, but sometimes that will require deference to action taken in other formal and informal organizations, or within states.” Michael Hart testified in Vancouver about the need for better “bridges” connecting the WTO to UN agencies like the ILO, and similar “crosswalks” to the IFIs. The attraction, of course, in terms of bringing sustainable human development goals into a still-emerging WTO/Bretton Woods regime is that these bodies actually have “teeth”. As Hugh Kindred remarked to the Committee in Halifax, compared with all of the UN agencies: “The WTO is the one body that if you join, you’re forced to comply or things happen to you. That makes it so totally different.” (*Evidence*, Meeting No. 107, March 24, 1999, Halifax)

It also makes a lot of our witnesses nervous. Does the WTO have the right corporate culture, or the kind of capacity, that would be required to make the leap to the kind of global governance role which is being indicated for it? This goes back to some of the outstanding issues of “constitutional” and structural reform which we addressed in Chapter 1. Some of those who testified would clearly prefer global trade and financial negotiations to be moved into strengthened UN forums. Indeed Kofi Annan himself has been insistent that the UN must be centrally involved. As he wrote in a recent essay:

¹³ Cf. Brigitte Lévy, “Globalization, Regionalization and Good Governance: Policy Implications for the Third Millennium”, (University of Ottawa, Working Paper September 1998), Proceedings of the Tenth International Conference of the Association for Global Business, New Orleans, November 1998.

¹⁴ Sydney Key, “Trade liberalization and prudential regulation: the international framework for financial services”, *International Affairs*, Vol. 75, January 1999, 74.

¹⁵ Alberto Tita, “Globalization: A New Political and Economic Space Requiring Supranational Governance”, *Journal of World Trade*, June 1998, 54.

... the UN is the one true global institution to which we all belong. It must have a seat at the table. Economic and financial strategies will succeed only if they are applied within a clear political framework [which] will command much wider support if, through the UN, all affected countries have a part in working it out. (...)

The UN has a responsibility, as the universal institution, to insist on the need for worldwide solutions that are fair to all. It is our job to ensure that nations do not react to this crisis [of globalization] by turning their backs on universal values. In such crises, we must come together to find solutions based on the founding principles which all our member states have in common: those of the UN Charter and the Universal Declaration of Human Rights. In particular, we have a special responsibility to speak up for the victims or potential victims.¹⁶

In regard to that mission, Errol Mendes proposed to the Committee that the WTO should be involved in finding constructive alternatives to labour exploitation and that "Canada could propose a world conference in the millennium, sponsored by the ILO, the United Nations, the World Bank and the IMF, to look at how trade standards and the international financial system are impacting on children. For example, there could be a motion to make bonded and forced labour of children a crime against humanity. I suggest that Canada can have a very focused approach, not try to take on everything ... to achieve very defined results in this very complex area." (*Evidence*, Meeting No. 102, March 18, 1999)

No doubt there are other areas of opportunity where a difference could be made by the kind of compelling international leadership which Canada exhibited in achieving a global ban on antipersonnel landmines that entered into legal

force earlier this year. We will never succeed if we do not try. But as that example also showed, and as the submission from the Canadian Council for International Cooperation underlined in its concluding recommendations to the Committee, no institution, country or government can do this in isolation, and no part of the system should be exempt from the reform challenge. At the multilateral level, this will mean working in common to develop democratic coalitions that strengthen public participation and parliamentary oversight roles, and that build the capacity of all societies to have their interests represented when trade and investment matters are discussed in international forums and decided at negotiating tables. Within Canada, a similarly inclusive participatory process must be developed to prepare, as CCIC put it –

... a coherent Canadian agenda for reforming the international economic system, including the WTO, through a multi-staged planning and policy making process involving the Ministries of Finance, Foreign Affairs, International Trade, International Cooperation, and the Environment, with the goal of policy coherence for human security, including strengthening the enforcement machinery of international agreements on human rights, labour rights, environment, gender equality and social development.¹⁷

The Committee agrees that Canada will hardly be in a position to advance an agenda within the WTO or elsewhere calling for greater coherence in international governance structures and processes if we ourselves have not put in place a coherent approach to the foreign and domestic policies that are needed to respond to the challenges of globalization. We need to include within that approach democratic participatory and deliberative processes which empower citizens, which make more effective use of parliamentary institutions, and which forge new connections among governments, the private sector, and

¹⁶ Kofi Annan, "UN Must be Part of the Solution", *New Perspectives Quarterly*, Fall 1998, p. 53.

¹⁷ "Bringing the WTO Back to International Humanitarian Values", Ottawa, March, 18, 1999, p. 7.

civil–society actors at all levels, in order to mobilize actions that serve the greater public good of all countries.

As Mr. Ruggiero’s parting reflections to the General Council of the WTO attest, and to which the Committee’s attention was drawn by Canada’s Ambassador John Weekes in one of the last meetings of this study, the future of the multilateral trading system is about a lot more than just balance sheets and commercial rules, as important as those are. Ultimately, the question which resonated in the testimonies of many of our witnesses, and with which we must contend in the development of a fully coherent foreign policy, is the following: What kind of society do we want to leave to our children, within what kind of global society?

The WTO, as Robert Wolfe reminded the Committee at the start of our parliamentary

study’s journey, is “a process not a destination”. But it is crucial that there be public control over this process, and over the direction in which it is leading. Indeed we might say the same thing of the preparations for the forthcoming negotiations which are expected to be launched at the Seattle Ministerial Conference later this year, and in which, we have argued throughout this Report, Canada, and Canadians as a whole, must be ready to engage constructively and democratically in our best interests.

That, in sum, is the challenge, the opportunity, and the promise of advancing a millennium agenda at the WTO that helps to make globalization more governable, – so that in a few years we will be able to say with confidence: We have achieved something that is good for all Canadians and which truly contributes to the global public good.

Recommendation 44

The Government should, on an ongoing basis, explore policy options related to the future place of the WTO within a reformed multilateral framework of global governance, in particular its relationship to the Bretton Woods International Financial Institutions (the IMF and World Bank) and to the United Nations system.

Recommendation 45

Canada should work with as many WTO Members as possible, in line with the reforms recommended in this Report, to seek institutional improvements for the purposes of achieving greater coordination and coherence among the activities of the WTO and those of other international organizations.

Canada should, in addition, support increased participation by appropriate United Nations bodies and UN–recognized civil–society organizations in the major discussions leading up to, during, and following the WTO’s Third Ministerial Conference in Seattle. Canada should also seriously examine former WTO Director General Ruggiero’s call for the UN’s Millennium Summit to be an occasion for re–examining the international architecture overall and for adopting a global plan of action to harness the positive momentum of globalization and freer trade to the goals of sustainable human development for the benefit of a better common future.

Request for Government Response

Pursuant to Standing Order 109, the Committee requests that the Government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (*Meeting Nos. 85, 86, 88, 90, 93, 95, 96, 98, 99, 101 to 110, 112, 113, 117, 119 to 128, 133, 135, 136, 142, 144, 146, 147, 149*) is tabled.

Respectfully submitted,

Bill Graham
Chair

Reform Party of Canada Dissenting Opinion

Canada Needs a Position at the WTO that is Credible and Effective

June 8, 1999

Introduction

In preparing for its report on Canada's position going into the upcoming World Trade Organization negotiations, the Standing Committee on Foreign Affairs and International Trade heard from hundreds of witnesses. The basic message the committee heard was that Canada had benefitted greatly from the expanded trade and investment in goods and services emanating from the North American Free Trade Agreement and the Uruguay Round of GATT.

Witnesses asked that Canada, therefore, continue the process of trade liberalization and recommended that the negotiations be expanded beyond the already scheduled negotiations in agriculture and services, so that even greater gains could be achieved.

In large part, the recommendations contained in *Canada and the World Trade Organization: Advancing a Millennium Agenda in the Public Interest* have addressed those requests and to this extent, the Reform Party agrees with the report.

Agriculture Requires Top Billing

When member countries participating in the Uruguay Round called for follow-up negotiations in the year 2000, they recognized that agriculture and services were the priority areas that required further work.

Yet, after listening to one agricultural group after another state its case, the committee's report fails to reflect the urgency with which Canada's agriculture and food sectors are demanding market access. This is the primary reason why the Reform Party is appending this dissenting opinion.

Agriculture first came under trade rules with the Uruguay Round, and although the agreement reached there was groundbreaking, the real work was deferred to the upcoming round. What has been accomplished so far is that quotas have been turned into tariff equivalents, so that disguised forms of protection are now more visible.

However, the hard work and the real gains still lie ahead. Exports subsidies must be eliminated, domestic subsidies reduced, tariff peaks levelled and other tariffs removed. Only then will Canada's agri-food industry benefit from the gains afforded by liberalized trade. If these objectives are not accomplished, Canadian farmers will continue to suffer because of foreign government interference in world markets.

Tariff and Subsidy Reductions are Critical

Few will dispute the benefits that accrue to Canada from expanded foreign trade. In the words of Canada's International Trade Minister, Sergio Marchi, "Freer trade promotes economic growth. Freer trade creates jobs and raises living standards. It offers people markets for their products, rewards for their labours and hope for their futures."

A recent Australian study quoted by Peter Watson, past chairman of the U.S. International Trade Commission in Washington, estimated that the last round of trade liberalization produced global economic gains in excess of \$200 billion. Another round reducing just half of the remaining barriers could add another \$400 billion and full barrier reduction could produce as much as \$750 billion in global benefits.

Research co-sponsored by the Agri-Industry Trade Group indicates that the elimination of tariffs within 10 years would result in net benefits to Canada's agri-food sector of at least \$2.5 billion per year.

The Reform Party believes that further gains could be achieved if Canada and the United States would work together to pressure other countries, notably the European Union, to totally eliminate all export subsidies and substantially reduce all domestic subsidies. This would end the perpetual cycle of overproduction and dumping of product on global markets which has the effect of depressing world prices. It would also end the inevitable bailout of farmers in competing countries.

"Balanced Approach" not Credible

The grain, oilseeds and beef sectors have made it clear that they expect and require major market access from the new round of the negotiations. The so-called "balanced approach" being advocated by other agriculture sectors is not a credible position for Canada and will cause us to fumble the major opportunity before us.

Canada cannot make the gains it needs by hitting the brake and the accelerator at the same time. We cannot press for market access and subsidy reduction, while at the same time maintaining the protectionist barriers we have in place. As expressed by the Western Canadian Wheat Growers Association, "It is unrealistic for the supply managed sector to expect continued high levels of protection from outside competition and continued inflated returns from the marketplace at the expense of Canadian consumers. These highly protected and managed industries are going to have to mature, as the grain industry has, to allow access to the Canadian market for their sensitive products and to take advantage of export opportunities."

Science Should Rule over Health Barriers

Canada must insist that internationally-accepted scientific rules be used to determine whether sanitary and phyto-sanitary measures are genuine health concerns or artificial trade barriers. While the committee's report begins by supporting science-based decision making, additional points call on the government to be the final adjudicator. The recent controversial Health Canada decision over rBST is an example of what can happen if politics are allowed to dominate scientific fact. Canadians should not tolerate political interference in sanitary and health issues at home, and we should not tolerate this type of government interference in the world market.

Trade Body Should Focus on Trade

The World Trade Organization should concentrate on liberalizing trade around the globe. That, in itself, is an enormous task.

There are those who want an agreement on culture at the WTO, even though no one yet seems to have come up with a common definition for culture. Others call for labour and environmental standards at the WTO. While still others want to put forward a human rights and social consciousness agenda.

The Reform Party believes that the WTO is not the proper forum to deal with these important and complex issues. It is a highly specialized trade body with a staff of 500 trade experts who lack social policy expertise. Social activists should look to the more appropriate bodies of the United Nations and International Labour Organization to address their concerns.

Conclusion

In conclusion, there is ample evidence that trade and investment liberalization has brought significant benefits to Canada. It is now up to the next round of WTO negotiations to bring similar gains to Canada's agriculture and food sector. The next round is crucial to that sector's future growth and prosperity.

Canada must have a clear position that it will fight for maximum market access for all countries, including major tariff reductions for everyone and significant subsidy reductions by all major players. Our position should be unambiguous. There is much to gain by being bold.

**CANADA AND THE FUTURE OF WTO:
ADVANCING A MILLENNIUM AGENDA
IN THE PUBLIC INTEREST**

A DISSENTING REPORT BY THE BLOC QUÉBÉCOIS
ON THE REPORT BY THE STANDING HOUSE OF COMMONS COMMITTEE ON
FOREIGN AFFAIRS AND INTERNATIONAL TRADE

JUNE 1999

I. Introduction

It was with an open mind and a readiness to co-operate that the Bloc Québécois took part in the proceedings of the Standing Committee on Foreign Affairs and International Trade on the upcoming round of the World Trade Organization's multilateral trade negotiations, scheduled to begin at the Seattle Ministerial Conference in November 1999. Over the past few months, the Bloc Québécois members of the Standing Committee have had the privilege of hearing many witnesses describe their view on the issues that will be the subject of negotiations during the Millennium Round.

The Bloc Québécois members of the Committee were very impressed by the quality and relevance of the evidence heard and the briefs received. They would like to thank all the witnesses who appeared before the Committee. They would also like to thank the Committee's team of researchers for their sustained work during the drafting of this report.

We can only deplore the time constraints within which MPs were forced to review the Committee's report, assess and discuss the important synthesis of the evidence put together by the Committee researchers, and to debate the report's 45 recommendations.

The Bloc Québécois did however expect that the Committee's report would clearly set out the positions and directions that the federal government should adopt in preparation for the Millennium Round of negotiations. Unfortunately, most of recommendations in the report are, in the opinion of the Bloc Québécois MPs, much too general, containing no specific guidelines for the government.

Our party did manage to have two important recommendations incorporated, or retained, in **recommendation 4**. The first involves the institutionalization of participation by the civil society in the WTO negotiating process. The second involves the establishment of a standing conference of WTO parliamentarians, made up of delegations representing the parliaments of member countries, in which elected representatives from Quebec could participate.

II. Quebec's participation in the WTO negotiations

The Bloc Québécois considers that Quebec's higher interests would be better served in the framework of a sovereign Quebec that could speak on its own behalf at the WTO negotiating table. As the economy becomes increasingly globalized, governments are transferring jurisdictions to international organizations like the WTO. They do however receive in return a considerable share in the sovereignty of their trading partners. In Canada at the present time, only the federal government has the power to make decisions about such transfers of jurisdiction. Quebec thus remains dependent on the federal government, a situation that cannot be allowed to continue indefinitely.

During consideration of the majority report, the Bloc proposed amendments to **recommendation 8**, with a view to authorizing Quebec to speak for itself at the WTO. Its amendments were rejected by the Liberal majority. Based on the Gérin-Lajoie doctrine, which deals with the extension of Quebec's jurisdiction at the international level, it is our opinion that since Quebec must comply on its own territory with international agreements negotiated under the aegis of the WTO, it should also be able to participate in negotiating such agreements.

The Millennium Round of negotiations is going to deal with a number of issues that are either directly connected with areas of jurisdiction that in Canada belong to Quebec, or could profoundly affect the exercise of these jurisdictions. To ensure that the interests of Quebec are well defended at the WTO, Quebec must have a seat at the negotiations as participating government. Quebec enjoys this status within the Agence de la Francophonie, where it speaks for itself when its interests are at stake. Such an accommodation by the federal government is thus both possible and desirable.

It is unfortunate that the possibility of such an accommodation was categorically rejected by the Liberal majority on the Standing Committee, which also rejected the proposed recommendation under which Quebec could have been represented by its own spokespeople at the upcoming negotiations. This refusal is hardly surprising, given that the federal government did not want Quebec to have any part in defending its own interests on the asbestos issue and that it also shilly-shallied when the question arose of giving Quebec the right to speak in international forums on cultural diversity.

On the latter question, moreover, Quebec has an obvious interest in promoting and asserting cultural diversity, and the federal government is definitely not the ideal defender of Quebec culture, since it regards it as a regional component of Canadian culture. That is why the Bloc Québécois will continue to demand that Quebec speak for itself at the WTO, in particular on the fundamental question of including a cultural exemption clause in WTO agreements.

III. Cultural exemption and promotion of cultural diversity

Recommendations 28 and 29 on culture make no reference at all to defending the principle of a broad, self-defining cultural exemption. And yet it was not so long ago, in the framework of negotiations on the Multilateral Agreement on Investment (MAI), that the federal government asserted the following in its response to the report on Canada and the MAI by the Standing Committee on Foreign Affairs and International Trade:

In the MAI negotiations, Canada, together with France and other countries, advocates a self-defining general carve-out for culture. Canada will remain part of the coalition of countries supporting this effort, and will pursue alliances with other OECD countries in support of this position. [] In sum, Canada's culture is simply not negotiable.

Why has Canada abandoned this position? We consider that Canada would be better advised to try to promote the principle of the broad, self-defining cultural exemption during the Millennium Round of negotiations. The upcoming negotiations will last several years, and it is less than certain that an international instrument on cultural diversity will emerge. As Ivan Bernier, professor of law at the Université Laval, remarked when he appeared before the Committee on March 22, "I did point out in Ottawa that it was probably useless to think of coming up with a cultural convention under the WTO, because it was already too late." Other witnesses corroborated the opinion expressed by Professor Bernier; they considered that priority should be given to the inclusion of a broad, self-defining cultural exemption clause.

Therefore, while it waits – probably for a long time – for a convention on cultural diversity, Canada has a moral obligation to take a firm stand on culture by

continuing to press the WTO for adoption of a cultural exemption. This cultural exemption should ensure more adequate protection than the one contained in NAFTA, and should not allow for the possibility of retaliatory measures being taken when it is invoked.

IV. Inclusion of a social clause

The Bloc Québécois disapproves of **recommendation 35**, which it regards as much too weak. Like a good many non-governmental organizations and a number of unions, our party favours the inclusion in the WTO rules of a social clause that would protect workers throughout the world.

The social clause could set out the obligation on the part of governments to respect the rules set out in the seven fundamental labour conventions of the International Labour Organization (ILO). The seven conventions are: convention 29 on forced labour, convention 87 on freedom of association and protection of the right to organize; convention 98 on the right to organize and bargain collectively; convention 100 on equal remuneration; convention 105 on abolition of forced labour; convention 111 on discrimination in employment; and convention 138 on a minimum working age. Canada still has not ratified the conventions on collective bargaining and protection from forced labour (slavery) or on a minimum working age (designed to prevent exploitation of children), i.e., ILO conventions 98, 29 and 138. The inclusion of a social clause, in the form we are recommending, could force it to respect these fundamental conventions.

The introduction of the ILO conventions into WTO agreements would help to prevent the most extreme forms of exploitation, of which women and children are especially likely to be the victims. By incorporating the conventions into WTO agreements, the Bloc Québécois believes that the injustices suffered by many workers throughout the world would at last be eliminated and respect for fundamental human rights would be improved.

V. The need for an environmental clause

The Bloc Québécois considers that **recommendations 37 and 38**, on the environment, are much too vague. The Bloc recommends the insertion within the WTO rules of an environmental protection clause. This clause should stipulate that WTO member states are obliged to respect their obligations under environmental agreements and treaties.

VI. The WTO and human rights

The Bloc Québécois considers that **recommendation 35** is not strong enough when it comes to defending human rights. In our party's view, it seems clear that international trade is not incompatible with the promotion of human rights. In addition, we note that the Canadian government's language is ambivalent when it comes to promoting respect for human rights in the context of its international trade relations.

Our party considers that in the Millennium Round of negotiations, Canada should be the staunch champion of the inclusion of the principles of the UN's Universal Declaration of Human Rights and other international human rights instruments in the WTO rules. The members of the WTO and the states that wish to

join would then be obliged to respect the fundamental principles of these declarations and instruments.

In this regard, we support the remarks of Warren Allmand, President of the International Centre for Human Rights and Democratic Development, who said when he appeared before the Committee on March 24, "In a nutshell, we argue that the UN Charter and international human rights law have primacy over all international trade agreements, including the WTO, and this should be recognized in a revised WTO." The Bloc Québécois considers it is necessary to specify that the decisions of the UN Security Council, in particular when it comes to imposing economic sanctions on governments that violate human rights, should take precedence over economic obligations set out in WTO agreements.

VII. The WTO and the ongoing negotiating process

The Bloc Québécois would have liked the Committee to propose to the government that future negotiations be ongoing, and not in the form of rounds of negotiations as with the GATT.

Our party shares the view put forward by Jeffrey Schott of the Institute of International Economics In Washington, who pointed out that the WTO is now a permanent institution and its negotiations should be carried out on a continuing basis. Mr Schott said on May 12 when he appeared before the Committee, "What I envisage is continuing negotiations and every two or three years trade ministers use their regularly scheduled meetings as action-forcing events to put together a package of trade agreements, not necessarily covering every aspect of every issue ...". This mechanism would make it possible to modernize the trade negotiation process. Obviously, Quebec would have to participate in these continuing negotiations, both before and after its accession to sovereignty.

VIII. Parliamentary follow-up on the Millennium Round of negotiations

Not only is it essential that Parliament monitor the Millennium Round of negotiations, as proposed in the report's **recommendation 2**, it is also important that Parliament give its consent to Canada's acceptance of any agreements adopted during the Millennium Round. These are important treaties: it would therefore be appropriate, once they have been signed by the government, for them to be tabled to Parliament and debated. Parliament would then have to pass a concurrence resolution. Backed by this endorsement, the government could announce its willingness to be bound by the agreements, and table its instrument of acceptance.

The Bloc Québécois finds it unacceptable that the Liberal majority on the Standing Committee rejected its proposal calling for Parliament to give its approval after the signing, but before the acceptance, of agreements adopted in the framework of the Millennium Round.

IX. Conclusion

The Bloc Québécois took an active part in the consultation of the citizens of Canada and Quebec on the upcoming round of multilateral trade negotiations, to be held under the aegis of the World Trade Organization. The consultation process gave the Bloc Québécois an opportunity to understand the full importance of these negotiations and the urgency of preparing adequately for negotiations. The process

also demonstrated that the Liberal majority was not at all ready to make recommendations that would give clear direction to the government, and that it essentially wanted to preserve for the government as much room to manoeuvre as possible.

The same Liberal majority also displayed intransigence in the face of Quebec's claim to be entitled to participate in the WTO negotiations and have a genuine right of intervention and oversight on issues having to do with its areas of jurisdiction. The Liberal majority rejected the very idea of participation by the other provinces in the WTO negotiations. The Bloc Québécois intends to continue to demand a real role for Quebec in the Millennium Round of negotiations, so that it can promote positions that do not compromise Quebec's economic, social and cultural development. The Bloc will continue to defend Quebec's true interests and to keep a steadily watchful eye on the Millennium Round of WTO negotiations.

Benoît Sauvageau, MP for Repentigny
Maud Debien, MP for Laval—East
Daniel Turp, MP for Beauharnois—Salaberry

NDP Minority Report

1. The NDP notes that Trade Minister Sergio Marchi is quoted in the majority report as saying that “trade allows us to export not only our goods, but also our values.” The NDP files this minority report on Canada’s approach to the World Trade Organization because we believe that, contrary to Minister Marchi’s vain hopes, the WTO has become, and was intended to be, like unto the NAFTA, a context where most of Canada’s most important values are not exported, but rather exterminated, by being made unlawful.
2. On the same page the majority report quotes former WTO Director General Renato Ruggiero asking, in response to those who want environmental and social issues to be dealt with at the WTO, “do we really want the WTO to play judge, jury, and police of our environmental, social, and ethical values?” The answer to Ruggiero’s question is that the WTO is already playing this role, but neither he nor it can admit this reality. Trade rules, trade and investment interests, and an all pervasive ideology of trade liberalization, are trumping many established ways of doing things in Canada, and in other nations that have developed on the basis of social or cultural goals being paramount, or of ethical and environmental norms being superior to economic ones.
3. Unfortunately, despite the existence of international agreements and institutions which address so-called non-trade issues, it is only trade rules that have the distinction of being enforceable, and enforced. This is why, as the majority report itself notes, that the whole question of intellectual property eventually came under the umbrella of the WTO, in the form of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement). The World Intellectual Property Organization had existed since 1967, but it had no mechanism to force compliance. Under the WTO, the multi-national drug companies and others who profit from global patenting found what they had been looking for. For the NDP, this raises the question of why a similar thing could not be achieved in other areas of concern. If the International Conference of Free Trade Unions (ICFTU) had as much power as the global drug corporations would we not already have a (TRCLS agreement) i.e. an agreement in trade related aspects of core labour standards.
4. Thus there are only two politically and morally adequate approaches to the WTO. The first is to insist on the WTO dealing, in an enforceable way, with social, environmental, labour and human rights issues, before it goes any further down the road of trade liberalization. The second is to insist, before there is any more trade liberalization, that other international agreements and institutions, like the International Labour Organization (ILO), be given “teeth”, be given the power to effectively sanction behaviour which violates certain agreed upon rules.
5. Either of the two approaches suggested above would take time, and this would dovetail nicely with the view of many witnesses who testified before the committee, a view which the NDP shares, that there is a need for more time to digest what was agreed upon in the Uruguay round of trade negotiations that produced the WTO in 1994. Some developing countries need time just to implement the last round. Others, like Canada, should at least take the time to reflect upon and to analyze what has already gone on, before going any further.
6. The majority report does not recommend either of the two approaches suggested above. Instead, while recommending full Canadian participation in the upcoming negotiations, it only talks about Canada putting forward options to integrate the “trade-linked social dimensions” within the existing “WTO constitutional principles, agreements, and activity structures.” Not much of a challenge to the status quo here. And compliance, in terms of WTO rules and practices being in conformity with other multilateral obligations

in areas such as labour rights and human rights, is left, by the majority report, to be considered “in the longer term”.

7. As the NDP said in our minority report on the Multilateral Agreement on Investment (MAI), those who would complete or perfect the enshrining and enforcement of corporate rights, while leaving the enforcement of corporate responsibilities and the rights of workers, the environment, and societies for another day, perhaps even another generation, have much to answer for by way of moral reasoning.
8. The NDP does support a rules-based global trading regime, or a rules based global economy. We believe in rules, for two reasons. Canada is an exporting nation, and needs to have fair access to other markets in order to ensure prosperity. But we also believe in rules, just as importantly, because there is a need to regulate economic activity in the public interest. Our problem with the WTO is that it is based on an uncritical embrace of the view that unfettered free markets are the solution to all of humanity's problems. Instead of economic power being regulated in order to serve the common good, the primary purpose of the WTO is to regulate, or limit, the power of governments to stand in the way of the profit strategies of multinational corporations. The mandate of the WTO has too much to do with trade liberalization as an end in itself, and far too little to do with promoting social, economic, and ecological justice. Instead of acknowledging the growing gap between rich and poor, within and between countries, a growing inequality caused by “globalization”, WTO leaders continue to pretend that more of the same will somehow do the trick.
9. The WTO was created by and is still informed by, a certain free market triumphalism and fundamentalism which tolerates no ideological or political diversity, no matter how democratically arrived at. State trading enterprises, like the Canadian Wheat Board, and other ideological hybrids like orderly marketing and supply management, are clearly on the hit list. Canadian policies on generic drug pricing, and split-run magazines have already been struck down by the WTO. Countries like Canada, with a history of ideological diversity, are to be homogenized and assimilated into what is essentially an American view of what constitutes proper policy. The democratic choices of countries with different political traditions and different visions of the global future are treated as forms of political deviance, to be cleansed by the steam rolling political monoculture of which the WTO has become a servant.
10. The NDP takes the view that, of those who had an opinion about the WTO itself, most witnesses were sceptical about the nature and mandate of the WTO as it currently exists. Of course, many other witnesses, particularly those from particular economic or business sectors, took the existence of the WTO as a given, and gave advice to the committee as to how their particular interests could be advanced or protected by the government in the upcoming negotiations. This is perfectly understandable. But the role of an opposition party is not to take for granted the political choices of the government, no matter how long established or well entrenched.
11. The NDP believes that our critical stance towards the WTO is more reflective of how Canadians truly felt about their first taste of world government. To give up on sovereignty for the greater good of global justice or planetary ecological survival is one thing, and something that Canadians might support. But giving up sovereignty just to make the world a barrier free playground for the economically powerful and aggressive, that is something that the NDP doesn't support. We believe a majority of Canadians share our view on this, and so we file this minority report.

Bill Blaikie, MP
Winnipeg—Transcona
NDP Critic for International Trade

DISSENTING OPINION PROGRESSIVE CONSERVATIVE PARTY OF CANADA

June 9, 1999

Before I go any further, let me thank the members of the Committee for their availability, their interest and their professionalism, which made the working environment so agreeable. A very warm thank you is indicated as well for all the staff who worked directly or indirectly for the Committee.

I would also like to take this opportunity to thank all the witnesses who took the time and trouble to meet us, either in Ottawa or on our travels outside the capital. Their analyses, their convictions and their situations helped us define and enrich our own thinking. In addition, the discussions that we as parliamentarians had with one another enabled us to enrich our individual thinking about the upcoming WTO negotiations. It would thus have been desirable if the same dynamic could have prevailed during the so-called discussion of the recommendations.

Unfortunately, it was made clear from the beginning that each party would produce a dissenting report, without any real effort being made to reach a consensus on the recommendations. This strategy was adopted with the avowed intent of saving time: each party would prepare its own little report, without discussion, negotiation or explanation, without any exchange of views with the rest of the Committee. Each party would unveil its report without ever really talking to the others. Each was to operate in a vacuum instead of in communication with one another. The inadequate time allocated to considering the recommendations was a farce. And for all the witnesses who had made the effort to appear before us, it was a slap in the face.

This report on the next round of WTO negotiations represents billions of dollars in international trade, with a direct impact on millions of Canadian and on tens of thousands of jobs. That is why, in my opinion, this is one of the most important reports ever for the country's economic future.

The whole farce of considering the recommendations was "justified" on the grounds that the House of Commons was getting ready to adjourn. The consequences are serious. One of them can be summed up as follows: Canada has no position that reflects the public consultations or the concerns of the witnesses or of parliamentarians as a whole. On the eve of the most important negotiations that Canada can undertake, the government has not even bothered to obtain the support of its parliamentarians. This is a position of weakness and possibly of failure.

I would have liked to be able to study each recommendation in depth, discuss it and come to terms with it. I wish we could have done this in our own report, but we did not have that lux-

ury either, the Committee having decided to restrict the length of the minority reports. But let me give you one example of a recommendation that has almost no connection with what was discussed during the consultations: culture.

It should be noted that in not one single recommendation do the words “exemption”, “promotion”, “exception” or “protection” occur. And yet most of these terms appear in the FTA and NAFTA. All of them have been heard on the government’s lips over the past year, and even in recent weeks. It is now obvious that Canada’s defeat at the hands of United States on Bill C-55 is even worse than expected. The consequences of this “agreement” are well demonstrated in the wording of the recommendations in chapter 7 on culture. These contain NOTHING of significance at all about the development and preservation of culture, for which most of the witnesses argued.

What message are we sending to the witnesses who appeared before the Committee to defend our culture?

What message are we sending to people in all regions of this country?

What disturbing message are we sending to Quebec?

Where culture is concerned, Canada is and will remain, judging by these recommendations, in the passenger seat and not behind the wheel during the next round of negotiations.

The few hours allowed for consideration of the recommendations were extremely frustrating for me. You have accustomed me to a much more professional and collegial style of working; I am personally disappointed, and on behalf of my country I am angry.

I do not and cannot blame you. Your personal and professional qualities make you an extremely positive person. Clearly you, like the rest of us on the Committee, have to submit to the crazy rule of rushing to cobble together the work of several months in a few hours, before Parliament adjourns. But as far as I am concerned, your government had a choice: it could have handled consideration of this report very differently.

Canada is already one strike down, vis-à-vis the American giant and all the member countries of the WTO. Not to have sought the majority support of Canada's parliamentarians before adopting this report constitutes, in my opinion, a serious error on the government's part. All we can do now is trust that the government's response to this report is more solid and credible than the recommendations we have made to it.

The Progressive Conservative Party intends to publish its position on the important issues of the upcoming WTO negotiations in several months' time.

Let us hope that in the future your government's agenda will not cause problems for the country.

André Bachand, MP
Foreign Affairs and International
Trade Critic
Progressive Conservative Party of
Canada



Appendices

Appendix A: Membership of the World Trade Organization

Appendix B: List of Agreements, Ministerial Decisions and Declarations Resulting from Multilateral Trade Negotiations of the Uruguay Round

Appendix C: List of Witnesses

Appendix D: List of Submissions

APPENDIX A

WORLD TRADE ORGANIZATION

WT/INF/6/Rev.5

3 February 1999

(99-0382)

MEMBERSHIP OF THE WORLD TRADE ORGANIZATION

Revision

Upon the accession of Latvia, on **10 February 1999** the number of Members of the World Trade Organization shall reach **134**. The following is the list of Members and their membership is effective as of the dates indicated:

<u>Government</u>	<u>Entry into Force/ Membership</u>
Angola	1 December 1996
Antigua and Barbuda	1 January 1995
Argentina	1 January 1995
Australia	1 January 1995
Austria	1 January 1995
Bahrain	1 January 1995
Bangladesh	1 January 1995
Barbados	1 January 1995
Belgium	1 January 1995
Belize	1 January 1995
Benin	22 February 1996
Bolivia	14 September 1995
Botswana	31 May 1995
Brazil	1 January 1995
Brunei Darussalam	1 January 1995
Bulgaria	1 December 1996
Burkina Faso	3 June 1995
Burundi	23 July 1995
Cameroon	13 December 1995
Canada	1 January 1995
Central African Republic	31 May 1995
Chad	19 October 1996
Chile	1 January 1995
Colombia	30 April 1995
Congo	27 March 1997

Costa Rica	1 January 1995
Côte d'Ivoire	1 January 1995
Cuba	20 April 1995
Cyprus	30 July 1995
Czech Republic	1 January 1995
Democratic Republic of the Congo	1 January 1997
Denmark	1 January 1995
Djibouti	31 May 1995
Dominica	1 January 1995
Dominican Republic	9 March 1995
Ecuador	21 January 1996
Egypt	30 June 1995
El Salvador	7 May 1995
European Community	1 January 1995
Fiji	14 January 1996
Finland	1 January 1995
France	1 January 1995
Gabon	1 January 1995
The Gambia	23 October 1996
Germany	1 January 1995
Ghana	1 January 1995
Greece	1 January 1995
Grenada	22 February 1996
Guatemala	21 July 1995
Guinea	25 October 1995
Guinea Bissau	31 May 1995
Guyana	1 January 1995
Haiti	30 January 1996
Honduras	1 January 1995
Hong Kong, China	1 January 1995
Hungary	1 January 1995
Iceland	1 January 1995
India	1 January 1995
Indonesia	1 January 1995
Ireland	1 January 1995
Israel	21 April 1995
Italy	1 January 1995
Jamaica	9 March 1995
Japan	1 January 1995
Kenya	1 January 1995
Korea	1 January 1995
Kuwait	1 January 1995
Kyrgyz Republic	20 December 1998
Latvia	10 February 1999
Lesotho	31 May 1995
Liechtenstein	1 September 1995
Luxembourg	1 January 1995
Macau	1 January 1995

Madagascar	17 November 1995
Malawi	31 May 1995
Malaysia	1 January 1995
Maldives	31 May 1995
Mali	31 May 1995
Malta	1 January 1995
Mauritania	31 May 1995
Mauritius	1 January 1995
Mexico	1 January 1995
Mongolia	29 January 1997
Morocco	1 January 1995
Mozambique	26 August 1995
Myanmar	1 January 1995
Namibia	1 January 1995
Netherlands – For the Kingdom in Europe and for the Netherlands Antilles	1 January 1995
New Zealand	1 January 1995
Nicaragua	3 September 1995
Niger	13 December 1996
Nigeria	1 January 1995
Norway	1 January 1995
Pakistan	1 January 1995
Panama	6 September 1997
Papua New Guinea	9 June 1996
Paraguay	1 January 1995
Peru	1 January 1995
Philippines	1 January 1995
Poland	1 July 1995
Portugal	1 January 1995
Qatar	13 January 1996
Romania	1 January 1995
Rwanda	22 May 1996
Saint Kitts and Nevis	21 February 1996
Saint Lucia	1 January 1995
Saint Vincent and the Grenadines	1 January 1995
Senegal	1 January 1995
Sierra Leone	23 July 1995
Singapore	1 January 1995
Slovak Republic	1 January 1995
Slovenia	30 July 1995
Solomon Islands	26 July 1996
South Africa	1 January 1995
Spain	1 January 1995
Sri Lanka	1 January 1995
Suriname	1 January 1995
Swaziland	1 January 1995
Sweden	1 January 1995

Switzerland	1 July 1995
Tanzania	1 January 1995
Thailand	1 January 1995
Togo	31 May 1995
Trinidad and Tobago	1 March 1995
Tunisia	29 March 1995
Turkey	26 March 1995
Uganda	1 January 1995
United Arab Emirates	10 April 1996
United Kingdom	1 January 1995
United States	1 January 1995
Uruguay	1 January 1995
Venezuela	1 January 1995
Zambia	1 January 1995
Zimbabwe	3 March 1995

APPENDIX B List of Agreements, Ministerial Decisions and Declarations Resulting from Multilateral Trade Negotiations of the Uruguay Round

FINAL ACT

AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

ANNEX 1

ANNEX 1A: MULTILATERAL AGREEMENTS ON TRADE IN GOODS

General Agreement on Tariffs and Trade 1994

Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994

Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994

Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994

Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994

Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994

Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994

Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994

Agreement on Agriculture

Agreement on the Application of Sanitary and Phytosanitary Measures

Agreement on Textiles and Clothing

Agreement on Technical Barriers to Trade

Agreement on Trade-Related Investment Measures

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

Agreement on Preshipment Inspection

Agreement on Rules of Origin

Agreement on Import Licensing Procedures

Agreement on Subsidies and Countervailing Measures

Agreement on Safeguards

ANNEX 1B:

General Agreement on Trade in Services

ANNEX 1C:

Agreement on Trade-Related Aspects of Intellectual Property Rights

ANNEX 2:

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3:

Trade Policy Review Mechanism

ANNEX 4:

Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

MINISTERIAL DECISIONS AND DECLARATIONS

Decision on Measures in Favour of Least-Developed Countries

Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking

Decision on Notification Procedures

Declaration on the Relationship of the World Trade Organization with the International Monetary Fund

Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries

Decision on Notification of First Integration under Article 2.6 of the Agreement on Textiles and Clothing

Decisions Relating to the Agreement on Technical Barriers to Trade

Decision on Proposed Understanding on WTO–ISO Standards Information System

Decision on Review of the ISO/IEC Information Centre Publication

Decisions and Declaration Relating to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Decision on Anti–Circumvention

Decision on Review of Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures

Decisions Relating to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value

Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires

Decisions Relating to the General Agreement on Trade in Services

Decision on Institutional Arrangements for the General Agreement on Trade in Services

Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services

Decision on Trade in Services and the Environment

Decision on Negotiations on Movement of Natural Persons

Decision on Financial Services

Decision on Negotiations on Maritime Transport Services

Decision on Negotiations on Basic Telecommunications

Decision on Professional Services

Decision on Accession to the Agreement on Government Procurement

Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes

UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

APPENDIX C

List of Witnesses

Associations and Individuals	Meeting	Date
Department of Foreign Affairs and International Trade Hon. Sergio Marchi, Minister International Trade Robert G. Wright, Deputy Minister International Trade Jonathan Fried, Assistant Deputy Minister Trade and Economic Policy	85	Wednesday, December 2, 1998
Agriculture and Agri-Food Canada Susan Vinet, Executive Director, International Trade Policy Directorate	86	Thursday, December 3, 1998
Department of Canadian Heritage Michael Wernick, Assistant Deputy Minister Cultural Development		
Department of Finance Terry Collins-Williams, Director, International Trade Policy Division		
Department of Foreign Affairs and International Trade Jonathan Fried, Assistant Deputy Minister Trade and Economic Policy		
Industry Canada Robert Ready, Director International Investment Services		
Department of Finance Terry Collins-Williams, Director International Trade Policy Division	88	Tuesday, February 9, 1999
Department of Foreign Affairs and International Trade Hon. Sergio Marchi, Minister International Trade Jonathan Fried, Assistant Deputy Minister Trade and Economic Policy John Klassen, Director General, General Trade Policy Bureau		

Associations and Individuals	Meeting	Date
Agriculture and Agri-Food Canada Paul Martin, Acting Director, Multilateral Trade Policy Division, International Trade Policy Directorate, Market and Industry Services Branch	90	Thursday, February 11, 1999
Department of Finance Gilles Gauthier, Acting Chief, Trade Services and Investment		
Department of Foreign Affairs and International Trade John Gero, Director General, Trade Policy Bureau II, Services, Investment and Intellectual Property Claude Carrière, Director, Tariffs and Market Access Division		
Industry Canada Robert Ready, Director, International Investment Services		
Council of Canadians Maude Barlow, Chairperson	93	Tuesday, March 2, 1999
Polaris Institute Tony Clarke, Director		
Shannon and Associates Gerald Shannon, Former Deputy Minister of International Trade and Associate Deputy Minister of Foreign Affairs, Canada's Chief Negotiator for the Uruguay Round of Trade Negotiations		
As Individuals Lawrence Herman, Trade Lawyer Cassels, Brock, Blackwell Robert Wolfe, Assistant Professor, School of Policy Studies, Queen's University		
Alliance of Manufacturers & Exporters Canada Jayson Myers, Senior Vice-President and Chief Economist Pamela Fehr, Policy Analyst	95	Thursday, March 4, 1999
Consumers' Association of Canada Robert Kerton, Chair, Trade Committee		

Associations and Individuals	Meeting	Date
Grey, Clark, Shih and Associates Peter Clark, President	95	Thursday, March 4, 1999
International Institute for Sustainable Development David Runnalls, Interim President		
C.D. Howe Institute Daniel Schwanen, Senior Policy Analyst	96	Tuesday, March 9, 1999
Canadian Conference of the Arts Megan Williams, National Director Alexander Crawley, Member of the Board of Governors		
Centre for Trade Policy and Law of Carleton University Dennis Browne, Director		
Sectoral Advisory Group on International Trade (SAGIT) for Cultural Industries Ken Stein, Chair and Vice-President, Corporate and Regulatory Affairs Shaw Communications		
As Individuals Keith Acheson, Professor, Carleton University Ivan Bernier, Professor, Law Faculty University Laval Ann McCaskill, McCaskill Consulting Inc.		
Canadian Alliance of Agri-Food Exporters (AGRICORE) Patty Townsend, Manager, Communications and Public Affairs	98	Thursday, March 11, 1999
Canadian Federation of Agriculture Robert Friesen, President		
Centre for Trade Policy and Law of Carleton University William Miner, Senior Associate		
Dairy Farmers of Canada John Core, First Vice-President Yves Leduc, Assistant Director, International Trade Department		
“Union des producteurs agricoles du Québec” Yvon Proulx, Chief Economist		

Associations and Individuals	Meeting	Date
Canadian Steel Producers' Association Jean Van Loon, President Donald Belch, Director, Government Relations	99	Tuesday, March 16, 1999
IBM (Canada) Shirley-Ann George, Government Programs Executive		
Information Technology Association of Canada William Munson, Director, Policy		
Public Interest Advocacy Centre Michael Janigan, Executive Director Andrew Reddick, Director, Research		
As Individuals Jim Carroll C.J. Michael Flavell, Flavell, Kubrick & Lalonde		
Canadian Steel Producers' Association Jean Van Loon, President Donald Belch, Director, Government Relations	101	Tuesday, March 16, 1999
Thomas & Davies Serge Fréchette, Lawyer		
As Individuals Donald MacRae, Professor, Faculty of Law University of Ottawa Howard Mann, Consultant		
Canadian Centre for Policy Alternatives Bruce Campbell, Executive Director	102	Thursday, March 18, 1999
Canadian Council for International Co-operation Betty Plewes, President & CEO		
Human Rights Research and Education Centre Errol Mendes, Director		
North-South Institute Ann Weston, Vice-President		
Alliance of Manufacturers & Exporters Canada Lorne Janes, National Chairman & Past Chairman Burf Ploughman, Vice-President	103	Monday, March 22, 1999 St. John's, Newfoundland

Associations and Individuals	Meeting	Date
Fisheries Association of Newfoundland and Labrador Alastair O'Reilly, President Kevin Coombs, Chairman, Board of Directors	103	Monday, March 22, 1999 St. John's Newfoundland
National Anti-Poverty Organization Bev Brown, International Secretary		
Newfoundland Chicken Producers Supply—Management Group Eugene Legge, Vice-Chair		
“ACEF Rive-Sud” Enrico Théberge, Spokesperson	104	Monday, March 22, 1999 Quebec City, Québec
“Association coopérative d'économie familiale de Québec” Daniel Germain, Sociologist		
As Individuals Ivan Bernier, Professor, Law Faculty University Laval Paul Crête, M.P., Kamouraska— Rivière-du-Loup—Témiscouata— Les Basques Stéphane Rémillard, Consultant, International Trade		
Nova Scotia Supply—Management Agriculture Group Jack Johnson, Executive Director, Nova Scotia Milk Producers Stuart Allaby, Natural Products Marketing Council (NPMC) Ralph De Long, Chairman, Nova Scotia Egg Marketing Board Peter Hill, Vice-President, Nova Scotia Federation of Agriculture	105	Tuesday, March 23, 1999 Halifax, Nova Scotia
“Chambre de commerce de la MRC des Maskoutains” Denis Clouthier, Director General Mario De Tilly, Industrial Commissioner Saint-Hyacinthe Region	106	Tuesday, March 23, 1999 Saint-Hyacinthe, Québec
“Coopérative fédérée du Québec” Claude Lafleur, Secretary General Jean Brodeur, Director, Public Affairs		

Associations and Individuals	Meeting	Date
As Individuals	106	Tuesday, March 23, 1999
René Côté, Professor, "Centre de recherche en droit, sciences et sociétés, Université du Québec à Montréal"		Saint-Hyacinthe, Québec
Sylvestre Manga, Researcher, "Commerce international des produits agricoles et agricoles génétiquement modifiés, UQAM"		
Yvan Loubier, M.P., Saint-Hyacinthe—Bagot		
"Syndicat des employé(e)s de magasins et de bureaux de la SAQ"		
Jean Jr. LaPerrière, President		
Jacynthe Fortin, Sociologist, Author of the study "Enjeux sociaux de la privatisation de la SAQ : de la facture économique à la fracture sociale"		
François Patenaude, Researcher, "Chaire d'études socio-économiques de l'Université du Québec à Montréal"		
Ronald Guévremont, Communications Officer of the SEMB SAQ		
"Syndicat des producteurs de lait de Lanaudière"		
Jean-Guy Bouvier, Second Vice-President		
André Lépine, Administrator		
Guy Lorrain, Administrator		
Canadian Federation of Students — Nova Scotia Component	107	Wednesday, March 24, 1999
Penny McCall Howard, National Executive Representative		Halifax, Nova Scotia
Ian Sharpe, Executive Member		
OXFAM Canada		
Brian O'Neil, Program Coordinator		
As Individuals		
Mike Bradfield, Professor, Economic Department, Dalhousie University		
Hugh Kindred, Professor, Law School (Trade) Dalhousie University		
Anna Lanoszka, Ph. D. Student, Accession (Agriculture)		
James McNiven, Professor, Public and Business Administration, Dalhousie University		

Associations and Individuals	Meeting	Date
Brian Russell, Professor, Business School Dalhousie University	107	Wednesday, March 24, 1999 Halifax, Nova Scotia
Gilbert Winham, Professor, International Trade University of Dalhousie		
“Association québécoise de l’industrie du disque, du spectacle et de la vidéo (ADISQ)”	108	Wednesday, March 24, 1999 Montreal, Québec
Robert Pilon, Vice-President, Public Affairs		
“Barreau du Québec”		
Annie Chapados, Legal Consultant, Research and Legislation		
Chamber of Commerce of Quebec		
Michel Audet, President		
Confederation of National Trade Unions (CSN)		
Claudette Carbonneau, First Vice-President		
Peter Bakvis, Assistant to the Executive Committee		
“Conseil du patronat du Québec”		
Jacques Garon, Director of Research and Economist		
“Fédération des producteurs de lait du Québec”		
Alain Bourbeau, Director, Economic Research		
International Centre for Human Rights and Democratic Development		
Warren Allmand, President		
Diana Bronson, Coordinator, Globalization and Human Rights Programme		
Craig Forcese, Legal Consultant		
Carole Samdup, Assistant Coordinator Globalization and Human Rights Programme		
“Ordre des comptables agréés”		
Ginette Lussier-Price, Director, Inspection Branch and Professional Affairs		
“Ordre des ingénieurs du Québec”		
Luc Laliberté, Syndic		
Quebec Federation of Labour (FTQ)		
Henri Massé, President		
Lise Côté, Economist, Research Branch		

Associations and Individuals	Meeting	Date
Society of Composers, Authors and Music Publishers of Canada Gilles Valiquette, President Paul Spurgeon, General Counsel	108	Wednesday, March 24, 1999 Montreal, Québec
As Individual Joseph A. Di Iorio, Lawyer		
McCains Foods Arnold Park, CEO Michael Campbell, Vice-President and General Counsel Richard Bartlett, Executive Vice-President Yves Leclerc, Senior Agronomist Allan Walker, Purchasing Manager Heather Mullen, Associate Counsel	109	Thursday, March 25, 1999 Fredericton, New Brunswick
National Farmers Union — New Brunswick District Board Conrad Toner, National Board Member Darrill McLaughlin, Member		
New Brunswick Milk Board Robert Speer, Second Vice-President John Schenkels, Director Albert Neill, Director Stephen De Merchant, Director		
Canadian Environment Industry Association Colin Isaacs, Chair, National Policy Committee and President, Contemporary Information Analysis Robert Fraser, Chair, Environmental Exporters Council Rebecca Last, Director, Programs and Policy	110	Thursday, March 25, 1999 Montreal, Québec
Pharmaceutical Manufacturers Association of Canada Terry McCool, Vice-President, Corporate Affairs, Eli Lilly Canada Inc. Bernard Houde, Vice-President, Corporate Affairs, Merck Frosst Canada		

Associations and Individuals	Meeting	Date
“Réseau québécois sur l’intégration continentale (RQIC)” Peter Bakvis, Director, International Relations (CSN) Patrice Laquerre, Coordinator, “Centre québécois du droit de l’environnement” Yves Lanctôt, Advisor, “Centrale de l’enseignement du Québec” Catherine Saint-Germain, Vice-President Quebec Branch, “Association canadienne des avocats du mouvement syndical”	110	Thursday, March 25, 1999 Montreal, Québec
As Individuals Bonnie Campbell, Professor, Political Science Department, “Université du Québec à Montréal” Gilbert Gagné, Professor and Lecturer, Political Science Department, Concordia University and University of Ottawa Ysolde Gendreau, Professor, Law Faculty University of Montreal Thomas Lavier, Student, Political Science McGill University Vilaysoun Loungnarath, Professor, Law Faculty Montreal University		
Alliance of Manufacturers & Exporters Canada Jayson Myers, Senior Vice-President and Chief Economist Pamela Fehr, Policy Analyst	112	Tuesday, April 13, 1999
Fraser Institute Owen Lippert, Director, Law and Markets Project		
Patent and Trademark Institute of Canada Glen Bloom, President Stuart Wilkinson, Honourary Treasurer		
Specialty and Premium Television Association Jane Logan, President & CEO		
Teleglobe Inc. Meriel Bradford, Vice-President		

Associations and Individuals	Meeting	Date
Canadian Council of Professional Engineers Wendy Ryan-Bacon, Vice-President	113	Thursday, April 15, 1999
Industry Canada — Competition Bureau Konrad von Finckenstein, Commissioner Patricia Smith, Deputy Director, Investigation and Research, Economics and International Affairs Branch Dominique Burlone, Acting Assistant Deputy Director Investigation and Research Economics and International Affairs Branch		
Physicians for a Smoke-Free Canada Cynthia Callard, Executive Director		
Canadian Egg Marketing Agency Félix Destrijker, Chairman Neil Currie, Chief Executive Officer	117	Thursday, April 22, 1999
Canadian Fertilizer Institute Roger Larson, President Paul Lansbergen, Communications and Member Services Officer		
Canadian Pulp and Paper Association Joel Neuheimer, Manager, Market Access, Trade Affairs		
Fisheries Council of Canada Ronald Bulmer, President		
Appraisal Institute of Canada Peter Clark, President Terry Gifford, Executive Vice-President	119	Monday, April 26, 1999 Winnipeg, Manitoba
Canadian Alliance of Agri-Food Exporters (AGRICORE) Brian Saunderson, Vice-President Rick White, Manager, Policy, Research and Information		
Canadian Federation of Students — Manitoba Component Margaret Bryans, Co-Chair		
Canadian Oilseed Processors Association Robert Broeska, President		

Associations and Individuals	Meeting	Date
Canadian Union of Public Employees Paul Moist, President, CUPE Manitoba Allen Bleich, Manitoba Coordinator	119	Monday, April 26, 1999 Winnipeg, Manitoba
Canadian Wheat Board Larry Hill, Director Tami Reynolds, Vice-President, Corporate Policy		
Congress of Union Retirees of Canada Al Cerilli, Executive Board Member-at-large John Pullen, Vice-President, Manitoba Federation of Union Retirees		
Government of Manitoba Hon. Harry Enns, Minister, Agriculture Craig Lee, Assistant Deputy Minister Agriculture		
International Institute for Sustainable Development Aaron Cosbey, Interim Program Director Arthur Hansan, Senior Scientist and Distinguished Fellow		
Keystone Agricultural Producers Donald Dewar, President Hank Riese, Director		
Manitoba Chamber of Commerce Dave Penner, Vice-President Brian Kelly, Director		
Manitoba Milk Producers William Swan, Chairman W. J. S. Wade, General Manager		
Manitoba Society of Seniors Ramon Kopas, Executive Director Charles Cruden, Member, Board of Directors		
Mennonite Central Committee Canada Marion Meyer, Policy Analyst, Food, Disaster and Material Resources Stuart Clark, Program Director, Canadian Foodgrains Bank		

Associations and Individuals	Meeting	Date
National Farmers Union Fred Tait, Vice-President, NFU Region 5 (Manitoba) Coordinator	119	Monday, April 26, 1999 Winnipeg, Manitoba
North American Commission for Environmental Cooperation Janine Ferretti, Director		
People Empowering Themselves Against the System Susan Bruce, Spokesperson Randy Kotyk, Spokesperson		
Provincial Council of Women Valinda Morris, Member Elizabeth Fleming, Vice-President		
As Individuals Cynthia Cooke Derwyn Davies Barry M. Hammond George Harris Gilbert Laberge Bob Preston Muriel Smith, President, United Nations Association in Canada		
Asia Pacific Foundation of Canada William Saywell, President Yuen Pau Woo, Director, Research and Analysis	120	Monday, April 26, 1999 Vancouver, British Columbia
Canadian Action Party Connie Fogal, President		
Canadian Auto Workers Union Jef Keighley, National Representative		
Canadian Centre for Policy Alternatives Marc Lee, Research Economist		
Canadian Federation of Students — National Office Mark Veerkamp, Chairperson		
Centre for Trade Policy and Law of Carleton University Michael Hart, Senior Associate		

Associations and Individuals	Meeting	Date
Confederation of Canadian Unions — BC Council	120	Monday, April 26, 1999 Vancouver, British Columbia
Duncan McLean, Vice-President, Independent Canadian Transit Union		
Gary Worth, Canadian Pulp, Paper and Woodworkers of Canada (PPWC)		
Council of Canadians — Coquitlam Chapter		
Eunice Parker, Member		
Government of British Columbia		
Joan Smallwood, Chair, Special Committee on the MAI and MLA for Surrey—Whalley		
Scott Sinclair, Consultant		
Hospital Employees' Union		
David Ridley, First Vice-President		
Langara Students' Union Association		
Winnie Kuitenbrouwer, Spokesperson		
Rob Nagai, Spokesperson		
Union of British Columbia Indian Chiefs		
Stewart Phillip, President		
Ardith Walkem, Legal Counsel		
University of British Columbia's Students Against the MAI		
Uri Strauss, Spokesperson		
As Individuals		
John Argue, Working Group on Poverty and Amnesty International		
Noel Armstrong, Seniors Group, Unitarian Church of Vancouver		
Herb Barbolet, Executive Director, Farm Folk/City Folk Society		
Sandra Bauer, Municipal Councillor, Municipal Council — District of Squamish, B.C.		
Marc Bombois		
Elsie Dean		
Hugh Dempster		
Murray Dobbin, Council of Canadians Member		
Soonoo Engineer, President of WCRP, Women's International League for Peace and Freedom		
Lyle Fenton, Municipal Councillor, Municipal Council — District of Squamish, B.C.		

Associations and Individuals	Meeting	Date
Dorothy Goresky, Spokesperson, Unitarian Church of Vancouver	120	Monday, April 26, 1999 Vancouver, British Columbia
Jim Jordan, Chair, Defence of Canadian Liberty Committee		
Shane Koscielniak		
Damien McCombs, Student		
Doris McNab, Spokesperson, British Columbia Voice of Women		
Isabel Minty, CIVITAS, National Unity		
Albert Peeling, Lawyer, Defence of Canadian Liberty Committee		
Amy Pullen		
Stan Robertshaw		
Serge Robichaud		
Lydia Sayle, Spokesperson, British Columbia Voice of Women		
Olga Schwartzkopf		
Douglas Seeley, Systems Specialist in supply chains for commodity export, Director Inter-Dynamics P/L		
Angela Wanczura, Spokesperson, Education and Training Employees Association and Local 99 of the College Institute Educators Association		
B.C. Council of Marketing Boards	121	Tuesday, April 27, 1999 Vancouver, British Columbia
Arne Mykle, Spokesperson, Chicken Marketing Board		
John Woelders, Spokesperson, Broiler Hatching Egg Commission		
Dan Wiebe, Spokesperson, Turkey Marketing Board		
Tom Nash, Spokesperson, Milk Producers		
John Jansen, Spokesperson, Milk Marketing Board		
Business Council of British Columbia		
Gerry Lampert, President and Chief Executive Officer		
Jock Finlayson, Vice-President, Policy		
Canadian Association of Physicians for the Environment		
Peter Carter, Secretary		

Associations and Individuals	Meeting	Date
Canadian Marine Environment Protection Society Annelise Sorg, Executive Director	121	Tuesday, April 27, 1999 Vancouver, British Columbia
Cascadia Institute Mike Harcourt, Spokesperson Alan Artibise, Spokesperson		
Discovery Institute — Seattle Bruce Agnew, Spokesperson Jim Miller, Watcom County, Organizations of Governments		
Free Trade Lumber Council David Emerson, Co-Chair (President & CEO CANFOR)		
International Centre for Sustainable Cities Nola-Kate Seymoar, Executive Director		
National Farmers Union Cory Ollikka, President		
Pacific Corridor Enterprise Council Peter Fraser, President David Andersson, Director, Immigration Ombudsman James Kohnke, Director and Chair Transportation Committee John Winter, Director (President BC Chamber of Commerce, IMTC Project)		
Pacific Music Industry Association Ellie O'Day, Executive Director		
Service—Growth Consultants Inc. Dorothy Riddle, President & CEO		
West Coast Environmental Law Association Steven Shrybman, Executive Director		
As Individuals Jezrah Hearne Wendy Holm, Professional Agrologist, Senior Consultant and Agricultural Economist Olive Johnson Ross Johnson, Political Economist John Lovett Sean O'Connell Gil Yaron, Citizen's Council on Corporate Issues		

Associations and Individuals	Meeting	Date
Automotive Parts Manufacturers' Association Gerry Fedchun, President	122	Tuesday, April 27, 1999 Toronto, Ontario
Canadian Council for the Americas Richard Baker, Director and Legal Council Bill Holt, Director, Board of Directors		
Canadian Courier Association Allan Kaufman, Vice-President, Legal and Public Affairs		
Canadian Labour Congress Robert White, President Andrew Jackson, Senior Economist, Social and Economic Policy		
Canadians Concerned About Violence in Entertainment Rose Dyson, Spokesperson		
Common Frontiers Patricia Barrera, Coordinator John Dillon, Board Member and Research Co-ordinator for the Ecumenical Coalition for Economic Justice		
Concerned Citizens Stephen Kerr, Spokesperson		
Horizons of Friendship Rick Arnold, Executive Director Jim Orr, Deputy Reeve of Percy Township and Steering Committee of the Northumberland Community Small Business Investment Fund		
Inter-Church Committee for Human Rights in Latin America Suzanne Rumsey, Mexico, Central America Coordinator Chris Ferguson, Area Secretary, Latin America and Caribbean Division of World Outreach United Church of Canada		
Maquila Solidarity Network Bob Jeffcot, Spokesperson		

Associations and Individuals	Meeting	Date
Mining Association of Canada Gordon Peeling, President and Chief Executive Officer Ted Yates, Chairman of the MAC Trade Committee and Director, Market Research Cominco Ltd. David Bumstead, Executive Vice-President Douglas Brown, Director, Economics and Pension Investments William Déeks, Chairman, Charles Tennant and Company, Member of the Mining Association of Canada	122	Tuesday, April 27, 1999 Toronto, Ontario
National Action Committee on the Status of Women Joan Grant-Cummings, President		
National Union of Public and General Employees Larry Brown, National Secretary-Treasurer Bob Dale, Chief Economist		
Ontario Liquor Board Employees Union Heino Nielsen, Business Agent Gord Girard, Member		
People Against the MAI Jean Smith, Spokesperson		
Stikeman, Elliot Avocats Francine Matte, Lawyer Lawson Hunter, Associate Randall Hofley, Associate		
United Steelworkers of America Hugh MacKenzie, Director of Research Lawrence McBrearty, Canadian National Director		
As Individuals Stephen Clarkson, Professor, Department of Political Science, University of Toronto Ann Emmett Shirley R. Farlinger, Toronto Branch of the UN Science for Peace John Kirton, Professor, Department of Political Science, University of Toronto Marion Odell		

Associations and Individuals	Meeting	Date
Sylvia Ostry, Distinguished Research Fellow Centre for International Studies, University of Toronto	122	Tuesday, April 27, 1999 Toronto, Ontario
Julie Soloway, Research Associate, Centre for International Studies, University of Toronto		
John Valleau, Professor, Chemical Physics Theory Group, University of Toronto		
World Federalists of Canada Simon Rosenblum, Director		
Alcan Aluminium Limited Dan Gagnier, Vice-President of Environmental and Corporate Affairs	123	Wednesday, April 28, 1999 Toronto, Ontario
“Association des manufacturiers de bois de sciage du Québec” Jacques Robitaille, President and Director General Jean-Pierre Grenon, Vice-President, Supplies and Forestry Brenda Swick-Martin, Lawyer, Ogilvy Renault		
Association of Canadian Publishers Jack Stoddart, President & CEO Stoddart Publishing		
AT&T Canada Enterprises Inc. Peter Barnes, Vice-President, Public Affairs Brian Kelly, Public Policy Consultant		
Cahoots Theatre Projects Hamal Docter, General Manager		
Canadian Association of Broadcasters Michael McCabe, President & CEO Glenn O’Farrell, Vice-President Global Television		
Canadian Business Press Michael Atkins, Chair, Legislative Affairs Committee		
Canadian Chamber of Commerce Nancy Hughes Anthony, President and Chief Executive Officer Milos Barutciski, Partner, Davies, Ward & Beck Vice-Chair of the CCIB Trade Policy Committee		

Associations and Individuals	Meeting	Date
Canadian Council for International Business Eric Iankelevic, Senior Policy Consultant David Hecnar, Director, International Policy Canadian Chamber of Commerce	123	Wednesday, April 28, 1999 Toronto, Ontario
Canadian Drug Manufacturers Association Jim Keon, President Michael Weingarten, Vice-President, Sales and Marketing for Apotex International Inc. Ed Hore, Hazzard and Hore		
Canadian Environmental Law Association Michelle Swenarchuk, Director, International Programmes		
Canadian Independent Record Production Association Brian Chater, President Alexander Mair, President, Attic Records Chair, Government Affairs Committee		
Canadian Magazine Publishers Association John Thomson, CEO, Canadian Geographic Society and Publisher, Canadian Geographic Magazine		
Canadian Publishers Council Claude Primeau, President & CEO Harper-Collins Canada Ltd. Jacqueline Hushion, Executive Director		
Canadian Restaurant and Food Services Association Jean-Pierre Leger, President & CEO, "Les Rôtisseries St-Hubert Ltd." Kathleen Sullivan, Director		
Canadian Sugar Institute Sandra Marsden, President Andrew Ferrier, President, Redpath Sugars		
Canadian Turkey Marketing Agency Phil Boyd, Executive Director Richard Ruchkall, Vice-Chairman		
Centre for Equality Rights in Accommodation Bruce Porter, Executive Director		
Chicken Farmers of Canada Mike Dungate, General Manager		

Associations and Individuals	Meeting	Date
Council of Canadians Catherine Goulet, Southern Ontario Representative	123	Wednesday, April 28, 1999 Toronto, Ontario
IBM (Canada) Shirley-Ann George, Government Programs Executive		
Low Income Families Together Josephine Grey, Executive Director		
McCarthy Tétrault, Barristers and Solicitors Peter Grant, Senior Partner		
Sierra Club of Canada Christine Elwell, Senior Policy Analyst		
Stelco Inc. Donald Belch, Director, Government Relations		
Supply Management Commodity of Ontario John Core, Chair, Dairy Farmers of Ontario on behalf of SM5-Ontario Cor Kapteyn, Vice-Chair, Ontario Broiler Hatching Egg and Chick Commission Mike Scheuring, Chair, Chicken Farmers of Ontario Henry Koop, Chair, Ontario Egg Producers' Marketing Board		
WIC Premium Television Grant Buchanan, Vice-President, Corporate Affairs		
As Individuals Don Jennison Don Johnston		
Alberta Forest Products Association Gary Leithead, Spokesperson	124	Wednesday, April 28, 1999 Edmonton, Alberta
Alberta Friends of Medicare Society Elizabeth Reid, Chair Bill Blanchard		
Alternatives North John Murray, Member (Yellowknife)		
BC•TELUS Willie Grieve, Vice-President, Regulatory Service John Makaryshyn, Government and Community Affairs		

Associations and Individuals	Meeting	Date
Canadian Dehydrators Association Garry Benoit, Executive Director	124	Wednesday, April 28, 1999 Edmonton, Alberta
Economic Development Edmonton Shawna Vogel, Member, Board of Directors Jim Edwards		
Edmonton Friends of the North Environment Society (EFONES) David Parker, Spokesperson		
National Farmers Union Jan Slomp, District Director George Calvin, District Director		
New Democratic Party of Alberta Raj Pannu, MLA — Trade Critic		
As Individuals E.J. Chambers, Director, Western Centre for Economic Research Rolf Mirus, Professor, Director, Centre for International Business, University of Alberta Elizabeth Smythe, Concordia University College of Alberta		
Agri-Industry Trade Group Dale Riddell, Co-Chair	125	Thursday, April 29, 1999 Calgary, Alberta
Alberta Barley Commission Glenn Logan, Chairman Brian Kriz, Past Chairman Clif Foster, General Manager		
Alberta Economic Development Authority Peter Watson, Chairman, Export Trade Committee		
Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) Brian Gromoff, National President Gary Neil, Policy Advisor		
National Farmers Union Michelle Melnyk, Youth President		

Associations and Individuals	Meeting	Date
Poultry & Dairy Industries of Alberta Don Sundgaard, Vice-Chair, Chicken Producers Bruce Beattie, Spokesperson, Milk Producers Tony Wooldridge, Chair, Egg Producers Dale Enarson, Chair, Turkey Producers Tina Notenbomer, Director, Hatching Egg Producers	125	Thursday, April 29, 1999 Calgary, Alberta
Western Canadian Wheat Growers Association Ted Menzies, Vice-President		
As Individuals Eugene Beaulieu, Department of Economics University of Calgary Stephen Randall, Dean of Social Sciences University of Calgary Dixon Thompson, Professor of Environment Science, Faculty of Environment Design Ekos 707, University of Calgary		
Catholic Rural Life Conference, Diocese of London Sue Langlois, Member, National Farmers Union	126	Thursday, April 29, 1999 London, Ontario
Food and Consumer Products Manufacturers of Canada (Toronto) Laurie Curry, Vice-President, Public Policy and Scientific Affairs Christine Lowry, Vice-President, Nutrition & Corporate Affairs, Kellogg Canada Inc.		
Greenpeace Randy Pedersen, London Branch		
Guelph Chapter of the Council of Canadians Dennis Gaumont, Vice-President Robert Barron, Member, Broadcaster CFRU 93.3FM David Thomas, Member-at-large		
London and District Labour Council Gil Warren, Co-Chair, Political Action Committee Bob Sexsmith, Member		
London Coalition for Fair Trade Maria Hatzipantelis, Spokesperson		

Associations and Individuals	Meeting	Date
Ontario Corn Producers' Association Dennis Jack, First Vice-President Terry Daynard, Executive Vice-President	126	Thursday, April 26, 1999 London, Ontario
Ontario Soybean Growers' Marketing Board Fred Brandenburg, Secretary-Manager Liam McCreery, Vice-Chairman		
Ontario Wheat Board William McClounie, General Manager Jim Whitelaw, Marketing Manager		
OXFAM Canada (London Branch) Cecily Nicholson, Spokesperson Bernie Hammond, Member		
Scotiabank Timothy Plumptre, Senior Vice-President, Trade Finance and Correspondent Banking		
As Individuals Jim Anderson, Service Employees International Union, Section 220 Al Kuhn		
Canadian Auto Workers (Local 444) Environment Committee Rob Spring, Chairperson	127	Friday, April 30, 1999 Windsor, Ontario
CAW Windsor Regional Environment Council Ken Bondy, President Charles Bake, Financial Secretary		
Citizens Environment Alliance—Green Planet Social Justice and Ecology Network Rick Coronado, Research and Communications Coordinator		
Ecumenical Coalition for Economic Justice of Wallaceburg Anne Bezaire, Spokesperson		
MAI-Day Coalition for Human Rights Vito Signorile, Spokesperson Renzo Zanchetta, Spokesperson		
National Farmers Union Perry Pearce, Member		

Associations and Individuals	Meeting	Date
Windsor — Essex County Development Commission Paul Bondy, Development Commissioner Elaine Prior, Manager, Administration	127	Friday, April 30, 1999 Windsor, Ontario
Windsor and Area Social Justice Coalition Anne Beer, Spokesperson		
Windsor and District Labour Council Peter Pellerito, Chairperson, Political Education Committee Gary Parent, President		
Windsor Council of Canadians Douglas Hayes, Chairman		
As Individuals Mansfield Mathias Carol Monk Christopher Sands, Director and Fellow, Canada Project Coordinator, American Auto Project Americas Program, Center for Strategic and International Studies		
Canadian Union of Public Employees Malcolm Matheson, Spokesperson	128	Friday, April 30, 1999 Saskatoon, Saskatchewan
Saskatchewan Council for International Cooperation John Derbowka, Board Member		
Saskatchewan Federation of Labour Don Anderson, Executive Assistant		
Saskatchewan Health Coalition Warren Peterson, Spokesperson		
Saskatchewan Wheat Pool Marvin Shauf, Vice-President Jonathan Grevel, Research Economist		
Saskatchewan Women Agricultural Network (SWAN) Noreen Johns, Executive Secretary		

Associations and Individuals	Meeting	Date
As Individuals	128	Friday, April 30, 1999
William Adamson		Saskatoon, Saskatchewan
Michelle Beveridge, OXFAM		
John and Betsy Bury		
John Foster, Ariel F. Sallow, Professor for Human Rights, University of Saskatchewan		
David Greenfield		
Jim Handy, President, CALACS, University of Saskatchewan		
Merv Harrison, Multi Faith Social Justice		
Tony Haynes, Roman Catholic Diocese of Saskatoon		
Don Irvine		
Jeanette Liberty-Duns, Saskatoon Presbytery of the United Church		
John McConnell, BSA MA Pag		
Linda Murphy, Ploughshares & ICUCEC (InterChurch Uranium Committee Educational Cooperative)		
Garth Nelson, Nature Saskatchewan		
Jan Norris		
Roger Petry, Saskatchewan Synod of Evangelical Lutheran Church		
Peter Phillips, Van Vliet Chair, Professor, Faculty of Agricultural Economics		
Tim Quigley, Council of Canadians		
Neil Sinclair, Leader, New Green Alliance		
Asit Sarkar, Director, University of Saskatchewan, International and Special Advisor to the President		
Carolyn Taylor, Saskatchewan Environmental Society		
Department of Foreign Affairs and International Trade	133	Tuesday, May 11, 1999
John Weekes, Ambassador of Canada to the World Trade Organization		
As Individuals	135	Wednesday, May 12, 1999
Pierre Sauvé, Fellow, Harvard Kennedy School and a non-resident fellow at the Brookings Institution		
Jeffrey Schott, Senior Fellow, Institute for International Economics, Washington D.C.		

Associations and Individuals	Meeting	Date
Department of Foreign Affairs and International Trade Jean-Pierre Juneau, Ambassador of Canada to the European Union	136	Thursday, May 13, 1999

APPENDIX D

List of Submissions

<p> “ACEF Rive-Sud” Keith Acheson William Adamson Agri-Industry Trade Group Alberta Barley Commission Alberta Economic Development Authority Alberta Forest Products Association Alberta Friends of Medicare Society Alcan Aluminium Limited Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) Alliance of Manufacturers & Exporters Canada Alternatives North Appraisal Institute of Canada John Argue Noel Armstrong Asia Pacific Foundation of Canada “Association coopérative d’économie familiale de Québec” “Association des manufacturiers de bois de sciage du Québec” Association of Canadian Publishers AT&T Canada Enterprises Inc. Automotive Parts Manufacturers’ Association B.C. Council of Marketing Boards Herb Barbolet “Barreau du Québec” Sandra Bauer Baymag BC•TELUS Eugene Beaulieu Ivan Bernier Michelle Beveridge Marc Bombois Michael Bradfield Brewers Association of Canada British Columbia Legislature Special Legislative Committee on MAI British Columbia Voice of Women Burke Mountain Naturalists John and Betsy Bury Business Council of British Columbia </p>	<p> Cahoots Theatre Projects Bonnie Campbell Canadian Alliance of Agri-Food Exporters (AGRICORE) Canadian Artists’ Representation, Saskatchewan Visual Artists Canadian Association of Broadcasters Canadian Association of Physicians for the Environment Canadian Auto Workers (Local 444) Environment Committee Canadian Auto Workers Union Canadian Bankers’ Association Canadian Centre for Policy Alternatives Canadian Chamber of Commerce Canadian Conference of the Arts Canadian Council for International Business Canadian Council for International Co-operation Canadian Council for the Americas Canadian Council of Professional Engineers Canadian Courier Association Canadian Dehydrators Association Canadian Drug Manufacturers Association Canadian Egg Marketing Agency Canadian Environment Industry Association Canadian Environmental Law Association Canadian Federation of Agriculture Canadian Federation of Students — National Office Canadian Federation of Students — Nova Scotia Component Canadian Fertilizer Institute Canadian Horticultural Council Canadian Independent Record Production Association Canadian Labour Congress Canadian Magazine Publishers Association Canadian Marine Environment Protection Society Canadian Oilseed Processors Association Canadian Poultry Meat and Egg Industries Canadian Pulp and Paper Association </p>
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Canadian Recording Industry Association
 Canadian Restaurant and Food Services
 Association
 Canadian Steel Producers' Association
 Canadian Sugar Institute
 Canadian Turkey Marketing Agency
 Canadian Union of Public Employees
 Canadian Wheat Board
 Canadians Concerned About Violence in
 Entertainment
 Jim Carroll
 Cascadia Institute
 Catholic Rural Life Conference, Diocese of
 London
 CAW Windsor Regional Environment Council
 Centre for Equality Rights in Accommodation
 Centre for Trade Policy and Law of Carleton
 University
 E.J. Chambers
 Chicken Farmers of Canada
 Citizens Environment Alliance — Green Planet
 Social Justice and Ecology Network
 City of Richmond
 Stephen Clarkson
 Common Frontiers
 Concerned Citizens
 Confederation of Canadian Unions — B.C.
 Council
 Confederation of National Trade Unions (CSN)
 Congress of Union Retirees of Canada
 "Conseil du patronat du Québec"
 Consumers' Association of Canada
 David Cook
 Cynthia Cooke
 "Coopérative fédérée du Québec"
 René Côté
 Council of Canadians
 Paul Crête
 Dairy Farmers of Canada
 Derwyn Davies
 Elsie Dean
 Department of Foreign Affairs and International
 Trade
 Discovery Institute — Seattle
 Economic Development Edmonton
 Ecumenical Coalition for Economic Justice of
 Wallaceburg
 Edmonton Friends of the North Environment
 Society (EFONES)
 Egg, Dairy and Poultry Farmers of New
 Brunswick
 Emerging Networks
 Soonoo Engineer
 Lyle Fenton
 "Fédération des producteurs de lait du Québec"
 Fisheries Association of Newfoundland and
 Labrador
 Fisheries Council of Canada
 John Fitzpatrick
 C.J. Michael Flavell
 Connie Fogal
 Food and Consumer Products Manufacturers of
 Canada
 John Foster
 Fraser Institute
 Free Trade Lumber Council
 Gilbert Gagné
 Georgia Strait Alliance
 Steven Globerman
 Dorothy Goresky
 Government of Manitoba
 David Greenfield
 Grey, Clark, Shih and Associates
 Guelph Chapter of the Council of Canadians
 Barry M. Hammond
 Jim Handy
 Merv Harrison
 Tony Haynes
 Jezrah Hearne
 Wendy Holm
 Human Rights Research and Education Centre
 IBM (Canada)
 Industry Canada
 Inter-Church Committee for Human Rights in
 Latin America
 International Centre for Human Rights and
 Democratic Development
 International Centre for Sustainable Cities
 International Institute for Sustainable
 Development
 Don Irvine
 Don Jennison
 Olive Johnson
 Ross Johnson
 Jim Jordan
 Jean-Pierre Juneau
 Keystone Agricultural Producers
 Hugh Kindred

Ken Kingdon	Sean O'Connell
John Kirton	Marion Odell
Shane Koscielniak	Ontario Corn Producers' Association
Gilbert Laberge	Ontario Liquor Board Employees Union
Langara Students' Union Association	Ontario Soybean Growers' Marketing Board
Anna Lanoszka	Ontario Wheat Board
Thomas Lavier	Sylvia Ostry
Jeanette Liberty-Duns	Oxfam Canada
William Lim	Pacific Corridor Enterprise Council
London and District Labour Council	Pacific Music Industry Association
Vilaysoun Loungrath	Sasha Palladino
John Lovett	Eunice Parker
MAI-Day Coalition for Human Rights	Patent and Trademark Institute of Canada
Sylvestre Manga	Betty Peacher
Manitoba Milk Producers	Albert Peeling
Manitoba Society of Seniors	People Against the M.A.I.
Howard Mann	Roger Petry
Maquila Solidarity Network	Pharmaceutical Manufacturers Association of Canada
Mansfield Mathias	Peter Phillips
Hon. Sergio Marchi	Physicians for a Smoke-Free Canada
McCains Foods	Polaris Institute
McCarthy Tétrault, Barristers and Solicitors	Poultry & Dairy Industries of Alberta
Ann McCaskill	Bob Preston
Damien McCombs	Provincial Council of Women
John McConnell	Public Interest Advocacy Centre
Mennonite Central Committee Canada	Amy Pullen
Mining Association of Canada (The)	Quebec Federation of Labour (FTQ)
Isabel Minty	Tim Quigley
Rolf Mirus	Stephen Randall
Carol Monk	Stéphane Rémillard
Beryl Mottershead	"Réseau québécois sur l'intégration continentale (RQIC)"
Linda Murphy	Roger Rice
National Action Committee on the Status of Women	Stan Robertshaw
National Anti-Poverty Organization	Serge Robichaud
National Council of Women of Canada	Joan Russow
National Farmers Union (Vancouver, Edmonton, Winnipeg and Windsor)	Christopher Sands
National Farmers Union — New Brunswick District Board	Asit Sarkar
Garth Nelson	Saskatchewan Council for International Cooperation
New Brunswick Milk Marketing Board	Saskatchewan Federation of Labour
New Democratic Party of Alberta	Saskatchewan Health Coalition
Jan Norris	Saskatchewan Motion Picture Association
North-South Institute	Saskatchewan Wheat Pool
Northumberland Chapter of the Council of Canadians	Saskatchewan Women Agricultural Network (SWAN)
Nova Scotia Supply — Management Agriculture Group	Pierre Sauvé
	Lydia Sayle

Jeffrey Schott
 Olga Schwartzkopf
 Science for Peace
 Scotiabank
 Sectoral Advisory Group on International Trade
 (SAGIT) for Cultural Industries
 Service-Growth Consultants Inc.
 Shannon and Associates
 Sierra Club of Canada
 Neil Sinclair
 Muriel Smith
 Elizabeth Smythe
 Society of Composers, Authors and Music
 Publishers of Canada
 Julie Soloway
 Specialty and Premium Television Association
 St. Angela's Academy
 Stelco Inc.
 Stikeman, Elliot avocats
 Supply Management Commodity of Ontario
 "Syndicat des employé(e)s de magasins et de
 bureaux de la S.A.Q."
 "Syndicat des producteurs de lait de
 Lanaudière"

Carolyn Taylor
 Teleglobe Inc.
 Raphael Thierrin
 Dixon Thompson
 "Union des artistes"
 "Union des producteurs agricoles du Québec"
 Union of British Columbia Indian Chiefs
 Union of British Columbia Municipalities
 United Steelworkers of America
 John Valteau
 Angela Wanczura
 John Weekes
 West Coast Environmental Law Association
 WIC Premium Television
 Windsor — Essex County Development
 Commission
 Windsor and Area Social Justice Coalition
 Windsor and District Labour Council
 Windsor Council of Canadians
 Gilbert Winham
 Robert Wolfe
 World Federalists of Canada
 Writers' Union of Canada
 Gil Yaron

